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Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

IN THE MATTER OF: : Docket No.
: 2012-6 CRB CD 2004-
Distribution of the 2004- : 2009 (PHASE II)
2009 Cable Royalty Funds :
:
:
IN THE MATTER OF: : Docket No.
: 2012-7 CRB SD 1999-
Distribution of the 1999- : 2009 (PHASE II)
2009 Satellite Royalty :
Funds :
:
:
:

VOLUME V

Friday,
April 17, 2015
Room LM-408
Madison Building
Library of Congress
101 Independence Avenue, S.W.
Washington, D.C.

The above-entitled matter came on for
hearing, pursuant to notice, at 9:11 a.m.

BEFORE:

THE HONORABLE SUZANNE M. BARNETT,
Copyright Royalty Judge
THE HONORABLE JESSE FEDER,
Copyright Royalty Judge

THE HONORABLE DAVID R. STRICKLER,
Copyright Royalty Judge

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1 get, he was asking you about the midpoint range

2 that you calculated for IPGs profit share.

3 And, again, I just wanted to make sure

4 -- and the idea was for each year you calculated

5 individual estimates of royalty share. And then

6 you sort of multiplied that individual value,

7 unit value if you will, by the coefficients.

8 So you get these values and then you

9 pick the highest and the lowest, that's the range

10 of shares and then you come at a midpoint, right?

11 Is that an accurate description of what you do?

12 JUDGE FEDER: You can look at Exhibit

13 260 and 261, Mr. --

14 MR. OLANIRAN: Thank you, Your Honor.

15 They did not get tabbed, they were new exhibits.

16 THE WITNESS: Yes, I mean I recall the

17 exhibit. I think it was a long question and to

18 some degree you were characterizing it. But the

19 way you described the computations is correct.

20 And the midpoint is simply the midpoint, I don't

21 know what you mean by selecting. It's computed.

22 MR. OLANIRAN: My mistake, you're

6

1 P-R-O-C-E-E-D-I-N-G-S

2 (9:11 a.m.)

3 JUDGE BARNETT: Good morning. We have

4 to learn not to laugh, it just encourages him.

5 Please be seated.

6 Good morning, Dr. Robinson, you remain

7 under oath. And I'm sorry about the rain, that's

8 not really Santa Monica weather.

9 DR. LAURA ROBINSON

10 (A witness produced on call by the

11 Plaintiffs, having been duly sworn according to

12 law, takes the witness stand and testifies as

13 follows:)

14 Mr. Olaniran?

15 MR. OLANIRAN: Thank you, Your Honor.

16 CROSS EXAMINATION

17 MR. OLANIRAN: Good morning, Dr.

18 Robinson. I'm Greg Olaniran, from MPAA,

19 hopefully.

20 I wanted to sort of take off from the

21 exchange you had towards the end of the day with

22 Judge Strickler. And I think he was trying to

8

1 absolutely right. It's a basic mathematical

2 midpoint between two numbers?

3 THE WITNESS: Yes.

4 BY MR. OLANIRAN:

5 Q Okay. And, again, during that

6 exchange with Judge Strickler, you don't really

7 tell us -- Well strike that.

8 Let me ask you in a different way

9 then. Are you testifying that each of these

10 royalty estimates before you established the

11 range, each is independently reliable?

12 In other words, are you asking the

13 Judges to pick one, if you will, to rely on

14 exclusively for allocating royalties?

15 A It would actually help me to have the

16 exhibits here and I don't think they're located

17 in my vicinity.

18 Q Okay.

19 MR. BOYDSTON: Your Honor, the Clerk

20 has put them into a binder as makes sense, and

21 that's probably, I should know where it is.

22 Would you like me to show --

9

1 JUDGE BARNETT: Look at like 2 of 2 at
2 the back.

3 MR. BOYDSTON: Yes. And they're not,
4 they don't have tabs on them yet so they --

5 JUDGE BARNETT: Oh, they're not
6 labeled. I see.

7 MR. BOYDSTON: Yes, they're labeled
8 and they have the numbers in the upper right-hand
9 corner.

10 THE WITNESS: I see. I understand.
11 Oh God, that binder just broke. Oh dear.

12 MR. OLANIRAN: May I approach, Your
13 Honor?

14 JUDGE BARNETT: You may.

15 MR. BOYDSTON: In the top right-hand
16 corner you'll see they put a number --

17 THE WITNESS: Yes, I got it.

18 MR. OLANIRAN: And then --

19 THE WITNESS: I lost the integrity of
20 the binder but I found the document.

21 Okay. So --

22 BY MR. OLANIRAN:

10

1 Q You are at 260, right?

2 A I'm at 260.

3 Q Got it. Let's just use '04 as an
4 example.

5 A Okay.

6 Q Okay. And there you have Column A is
7 the IPG's share of hours. Then B, C and D are
8 Time of Day, Fees Paid and Distance Respectively.
9 And then Column D, Column E, I'm sorry, is the
10 range. That range essentially is what you
11 calculated for time of day and what you
12 calculated for fees paid, is that correct?

13 A In a sense it's yes. But essentially
14 what that range is is taking the lowest possible
15 number you can get from that row and the highest
16 possible number you could get from that row and
17 identifying the range.

18 Q Exactly. So my question is for B, C
19 and D, are you testifying that each one, any one
20 of this is independently reliable for allocation
21 of royalties?

22 A So as a general principle, when

11

1 conducting any type of valuation, the approach is
2 to identify various methods, to compute value
3 based on the methods and to look for consistency
4 in convergence and robustness.

5 So I would say that all of it needs to
6 be looked at together. And at the same time it
7 may be appropriate to choose one approach in the
8 context of the information provided by all of it.

9 Q Well that doesn't really answer my
10 question. My question is whether or not you're
11 recommending that any of them is independently
12 reliable. So let me ask the question again. Is
13 any one of these three independently reliable?
14 Yes or no?

15 A I don't think you mean, I don't think
16 your use of the word independent means what it
17 means to me.

18 Q Okay. Let me elaborate on that. Can
19 the judges rely on any one of these three factors
20 to allocate royalties to IPG and MPAA?

21 A I'm distinguishing between having
22 never done the -- Suppose you just picked one and

12

1 had never done the analysis on the others. That
2 doesn't give you the same information as picking
3 that one when you have done the analysis of the
4 others.

5 Q I understand. But I mean --

6 A So I don't know what you mean. Do you
7 mean independence in the first sense? Like I
8 never looked at anything else and it's
9 independently reliable that way?

10 Q I think I'll rephrase the question.
11 Can the Judges rely on any one of these to
12 allocate royalties? Can they pick one?

13 MR. BOYDSTON: Your Honor, I think
14 it's asked and answered.

15 JUDGE BARNETT: Well, overruled, I'm
16 still a little vague.

17 THE WITNESS: Each of these three
18 provide different measurements that can be looked
19 at independently. And they can, and by
20 independently I mean in the context of the whole
21 chart. The whole chart exists, when we are
22 looking at this chart you could look at one of

13

1 them and say that's the one I think makes sense.

2 JUDGE STRICKLER: Let me ask a
3 question that is related perhaps to Mr.
4 Olaniran's question.

5 If you only had one of the columns, B,
6 C or D. Say B for argument's sake, and you
7 hadn't done the work for C or D, would you
8 independently rely on B, in my example, the
9 numbers in Column B, could we the Judges rely
10 just on the numbers in one column? In the end,
11 in the absence of any analysis such that Columns
12 C and D, just didn't exist?

13 THE WITNESS: As a general principle
14 I do not think it is a good idea to conduct
15 valuation using just one metric with no other
16 metrics around. So as an overarching principle
17 kind of regardless of which method it was I
18 wouldn't be content with just one estimate.

19 JUDGE STRICKLER: And you would apply
20 that overarching principle in response to my
21 question?

22 THE WITNESS: Yes.

14

1 JUDGE STRICKLER: But if I understood
2 your answer to Mr. Olaniran's question before you
3 were saying that you could, in this context, rely
4 on the numbers in just one column because you
5 have the other two columns to bracket it or give
6 it some sort of context. Is that what you were
7 saying?

8 THE WITNESS: Yes.

9 JUDGE STRICKLER: Thank you.

10 BY MR. OLANIRAN:

11 Q Now, did you calculate confidence
12 intervals for these estimates?

13 A Well --

14 Q Let's start with a yes or no first and
15 then if you want to proceed to explain that that
16 would really help.

17 A I don't think -- These are just
18 estimates. These are computations from the data.

19 Q I understand that. My question is did
20 you or did you not calculate confidence
21 intervals.

22 A Well I'm not predicting the value of

15

1 something that I would, there's prediction of
2 something to look for a confidence interval. I'm
3 not predicting, for example, the number of
4 distant viewers and then have a confidence
5 interval around that prediction.

6 Q So your answer is no you did not?

7 A I'm not sure I understand the context
8 of what it would mean to calculate a confidence
9 interval around these numbers.

10 Q So you did not? That is the answer?

11 A I guess the answer is no. Yes.

12 Q Thank you. Dr. Robinson, I would
13 really appreciate it, we are sort of pressed for
14 time today, and I would really appreciate direct
15 answers to my questions. I understand that
16 sometimes you have to explain a little bit more.
17 I really do. But in the interest of the other
18 parties that also have to put on that also have
19 to put up witnesses today we have to try to be as
20 expedient as possible. So I would --

21 MR. BOYDSTON: Your Honor, this isn't
22 a question. I think that this is for you to tell

16

1 her anyway.

2 JUDGE BARNETT: Sustained. Just ask
3 your questions, Mr. Olaniran.

4 BY MR. OLANIRAN:

5 Q You're very critical in your rebuttal
6 testimony with regard to the presence of zero
7 values and in quarter hours in the Nielsen data,
8 right?

9 A Yes.

10 Q And you think in general instances
11 those zero values in the Nielsen data are bad
12 because they're too high and they make Nielsen
13 data unreliable, that's the general argument,
14 right?

15 A I wouldn't put it quite like that.

16 Q How would you put it?

17 A I would put it that the incidence of
18 zero viewing is so high that it calls into
19 question whether they are in fact they are in
20 fact accurate zeros, i.e., no one was viewing.
21 Or whether they are simply reflective of a bad
22 estimate. I really don't know the standard

17

1 errors.

2 Q So you're not saying that they're
3 unreliable, you're saying it calls into question
4 whether or not they're reliable. Is that a fair
5 way to describe what you're saying?

6 A Well the numbers are so great, and by
7 great I mean there are so many zeros, and the
8 standard error is increasing as you add all of
9 these, as you add them together, the standard
10 error of some of the variables is increasing. So
11 we have these large unmeasured standard errors
12 and a huge number of zeros. So it seriously
13 calls into question the validity of the data.

14 Q And let me make sure I understand what
15 you mean by zero viewing. So assume that it's
16 one household of one person and they subscribe to
17 a CSO and it's delivering let's say ten channels.
18 Right? And then assume that the subscriber
19 watches every quarter hour of the day, every, all
20 96 of them, right?

21 And then, so if the subscriber, if
22 there are ten channels available and the

18

1 subscriber can watch only one channel at a time
2 and at any time whenever that subscriber is
3 watching one quarter hour, because there are nine
4 other channels, there will be zero on those nine
5 channels, correct? For that subscriber.

6 A For that subscriber.

7 Q For that subscriber for that quarter
8 hour, correct?

9 A Yes.

10 Q And so assume that it was the only
11 channel in the universe, if you will, that's 90
12 percent of zeros, correct?

13 A But the data isn't at a subscriber
14 level. It's at the station level.

15 Q I understand that. It's at the
16 station level because that's an aggregation of
17 subscriber viewings, is it not?

18 But let's finish my --

19 A I wouldn't put it that way.

20 Q Let's finish my hypothetical. But
21 back to my hypothetical. If a subscriber
22 receiving ten channels is watching one of them at

19

1 any quarter hour there will nine zeros, that's
2 how --

3 A For that subscriber.

4 Q Right. Nine zeros for that
5 subscriber.

6 A Yes.

7 Q And so in the real world the attempt
8 is to sort of predict how the population behaves
9 directly?

10 A Okay.

11 Q And so you would need more sample
12 points to actually aggregate, as you were saying,
13 the entire viewership to a particular station, to
14 a particular program or a --

15 A Let me just say something. That the
16 nine zeros you just described have nothing to do
17 with the incidence of zeros in the data. It's
18 unrelated.

19 Q Why is that?

20 A Because you're talking about
21 subscriber level data which we don't have. What
22 we have is station level data. And the station

20

1 zero viewing means in that quarter hour nobody
2 was viewing that station.

3 Q Well in my example no one would be
4 viewing that station because they're watching
5 something else.

6 A True. But a station has subscribers
7 from different CSOs maybe watching a station, so
8 --

9 Q Right. Or not.

10 A Or not. But a station has, there's
11 not a one-to-one mapping between stations and
12 CSOs obviously. Right?

13 Q Right.

14 A So the nine zeros that you just
15 described, we don't have subscriber level data so
16 you can't compare the zeros that we're seeing
17 there as to whether or not they seem reasonable
18 based on that way of thinking about it.

19 Q But it is in fact the subscriber level
20 data that grosses up to the station's viewing or
21 non-viewing numbers is it not?

22 A The stations would be the sum of the

21

1 -- The station viewing would be the sum of the
 2 subscribers to all the different CEOs, yes.
 3 Q All right. And if you extrapolate my
 4 hypothetical is actually the aggregation of all
 5 of the viewing in that viewing and the clustering
 6 really of the viewing that end up being, that
 7 make up the estimates, right?
 8 A I think that's correct.
 9 Q And whether you have zero values or
 10 whether you actually have recorded viewing,
 11 they're all sample points that become a part of
 12 the estimation, correct?
 13 A Sorry, what are the sample points?
 14 Q I'm saying whether you have, the
 15 quarter hours are the sample points, so whether
 16 it's a zero value or a recorded viewing they're
 17 all aggregated up. And each of them is a sample
 18 point that gets aggregated out to get --
 19 A A quarter hour observation is a
 20 summing across -- Excuse me. A quarter hour
 21 observation reflects in the Nielsen sample, how
 22 many people were recorded as watching that

22

1 station.
 2 Q Or not. Or people --
 3 A But which could be zero.
 4 Q Right.
 5 A Yes.
 6 Q And it's the sum of what ends up as
 7 viewing data is an aggregation of viewing and
 8 non-viewing.
 9 A Nielsen has identified various
 10 households and they're collecting the data from
 11 the households. And if anybody was -- whatever
 12 their watching behavior of that sample is is
 13 what's showing up in that quarter hour.
 14 Q And your interpretation of viewing is
 15 that no one is watching, right?
 16 JUDGE STRICKLER: Your interpretation
 17 of zero.
 18 MR. OLANIRAN: I'm sorry. Of zeros,
 19 thank you.
 20 THE WITNESS: My interpretation of
 21 zero is that the Nielsen sample indicates that
 22 nobody recorded that they were watching that

23

1 station.
 2 BY MR. OLANIRAN:
 3 Q And in your analysis did you endeavor
 4 to find out whether that meant someone,
 5 subscribers were watching something else other
 6 than the station?
 7 A I would love to have subscriber level
 8 data that would allow me to follow a subscriber's
 9 viewing choices. I have not seen that data.
 10 Q Okay. So you can't tell whether that
 11 in fact was the --
 12 A I'm sorry. I can't tell whether, what
 13 was the question?
 14 Q You can't tell whether it was the case
 15 that the zeros were the result of subscribers
 16 watching something else other than that station.
 17 A I think I already explained what I
 18 perceive the zeros to be. It's not subscriber
 19 level data. You see a zero that means the people
 20 in the Nielsen sample were not being recorded as
 21 watching that station. Individuals have
 22 subscriber statuses.

24

1 Q You say in your testimony that you
 2 reviewed Mr. Lindstrom's testimony in the 0003
 3 proceeding.
 4 A Yes.
 5 Q And you also reviewed his testimony in
 6 this proceeding, correct?
 7 A Yes.
 8 Q Okay. And you read his discussion
 9 about zero values in those two testimonies,
 10 correct?
 11 A Yes.
 12 Q Did you look at his oral testimony
 13 also?
 14 A You mean like from the transcript?
 15 Q Yes.
 16 A I think I did but it wasn't recently.
 17 Q Did you look at in preparation of your
 18 rebuttal testimony?
 19 A I just don't recall.
 20 Q Okay. Now you don't identify a
 21 benchmark for what should be considered a high
 22 level of zero values do you?

25

1 A No I do not.
 2 Q And you don't establish a benchmark
 3 for what should be considered low, do you?
 4 A No.
 5 Q And you don't, you haven't established
 6 a benchmark that would be considered an average,
 7 right?
 8 A I don't have the data to do those
 9 things.
 10 Q Okay. In fact, you're not aware of
 11 any industry standard that establishes what's
 12 high or low or average zero viewing in the
 13 Nielsen data, are you?
 14 A This is a data issue with which I have
 15 a lot of experience. Whenever you're working
 16 with data you need to look at the data, you need
 17 to understand the data. You need to look for
 18 issues. And the first thing you do when you look
 19 in the data is you literally look at the data.
 20 So this is just a standard process.
 21 You look at the data. You have these samples,
 22 you know that there's a rare event issue. You're

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1 not given, well I was not given, the standard
 2 errors from the Nielsen methodology so I don't
 3 have the standard errors and I see that the
 4 majority of the, a large majority of the
 5 observations are zero, it calls into question.
 6 I don't know the answer because we
 7 don't have the information. But certainly any
 8 analyst would be remiss not to notice that and
 9 not to question it.
 10 Q You said you worked with a lot of
 11 data.
 12 A Yes.
 13 Q Do you have specific experience in
 14 looking at Nielsen data?
 15 A I have looked at Nielsen data. I've
 16 looked at all kinds of internet traffic data.
 17 I've looked at many, many, many kinds of data.
 18 JUDGE STRICKLER: When you've looked
 19 at Nielsen data, you've done it, you were ruled
 20 as an expert?
 21 THE WITNESS: Yes.
 22 JUDGE STRICKLER: And have you relied

27

1 on Nielsen data as an expert?
 2 THE WITNESS: Yes.
 3 JUDGE STRICKLER: Did you have the
 4 standard errors when you relied on the Nielsen
 5 data?
 6 THE WITNESS: I believe the answer to
 7 that is yes.
 8 JUDGE STRICKLER: How many times has
 9 that occurred in your professional capacity where
 10 you've relied on Nielsen data and had the
 11 standard errors?
 12 THE WITNESS: So I'm not necessarily
 13 talking about getting or testifying to it, but
 14 simply doing the work.
 15 JUDGE STRICKLER: As an expert, right.
 16 THE WITNESS: Right.
 17 JUDGE STRICKLER: Not necessarily as
 18 a testifying witness, but I understand.
 19 THE WITNESS: I don't know, a dozen.
 20 JUDGE STRICKLER: And each time you
 21 had the standard errors?
 22 THE WITNESS: Oh, you're asking me if

28

1 I never had, that there were times when I didn't?
 2 JUDGE STRICKLER: Yes, I don't know
 3 which one is the null hypothesis.
 4 THE WITNESS: I would say usually
 5 there are standard errors.
 6 JUDGE STRICKLER: And there are times
 7 you've worked with it without the standard
 8 errors? If it's usually it wasn't always.
 9 THE WITNESS: There may have been. I
 10 don't recall offhand, besides this case. Because
 11 as I understand it this was like a specialized
 12 study.
 13 JUDGE STRICKLER: So the answer to my
 14 question, whether you relied an expert on Nielsen
 15 data without standard errors, your answer to my
 16 question is you don't recall?
 17 THE WITNESS: Right. Usually there
 18 are standard errors, I certainly recall relying
 19 on it when there was standard errors. Whether or
 20 not I've ever relied on it when there weren't I'm
 21 not sure.
 22 JUDGE STRICKLER: And how did you --

29

1 who provided you with the Nielsen standard error
2 information?

3 THE WITNESS: It was provided with the
4 data when I got it.

5 JUDGE STRICKLER: Directly from
6 Nielsen or from some other intermediary you
7 worked for?

8 THE WITNESS: Well, not exactly sure
9 what that means but it was --

10 JUDGE STRICKLER: Well who supplied --

11 THE WITNESS: -- Nielsen through I
12 think it was Nielsen. I don't recall the path
13 that was provided by Nielsen, perhaps through an
14 intermediary.

15 BY MR. OLANIRAN:

16 Q Okay. But in any of those instances,
17 just to follow up, in any of those instances that
18 you worked with viewing, did you work with
19 distant viewing?

20 A I don't think any of those were for
21 distant viewing, no.

22 Q Okay. So you don't have specific

30

1 experience -- Strike that.

2 In your preparation for this
3 proceeding, did you attempt to talk to anyone at
4 Nielsen about the zero viewing issue?

5 A No.

6 Q Okay.

7 JUDGE STRICKLER: Staying with zero
8 viewing for a second, since this is probably as
9 good a time as any to raise it, did you try to do
10 any kind of a correlation or regression with
11 regard to the data that you did have to see where
12 the viewing occurred?

13 And let me be more specific, ask you
14 a couple questions because this came up in
15 testimony in other proceedings about zero
16 viewing.

17 Did you try to see if there was any
18 kind of relationship between the zeros and
19 whether or not he zeros occurred during the
20 nighttime hours, say between midnight and 6:00
21 a.m., or some other overnight periods?

22 THE WITNESS: Just trying to think if

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1 I have any exhibits showing the distribution over
2 the day and time. I think the answer is no.

3 JUDGE STRICKLER: So you didn't do
4 that type of an analysis?

5 THE WITNESS: I certainly remember
6 from, you know, looking and analyzing the data
7 that there's, you know, lower viewership numbers
8 and greater zeros. Well, actually, you know, I
9 don't know. I don't remember. So no, I don't
10 know the answer to that.

11 JUDGE STRICKLER: Did you think about
12 doing such an analysis and then decide not to or
13 it never entered your mind to do that kind of
14 analysis?

15 THE WITNESS: No. I didn't think
16 about it.

17 JUDGE STRICKLER: Did you try to see
18 correlations or regression with regard to, how
19 many variables based one a location, the channel
20 location, and number of zeros?

21 In other words whether zeros were
22 showing up at low numbered channels, like

32

1 channels 2, 4, 5, 7, that type of thing. Whether
2 they were showing up on channels 145, 62, higher
3 channels.

4 THE WITNESS: Right, I did do a
5 station-level analysis looking at the zeros by
6 station and looking also at program titles to see
7 whether or not there were some stations where
8 they, you know, did not typically get zero
9 viewing but other stations where they always got
10 zero viewing. So that is included in here.

11 JUDGE STRICKLER: Okay. And did you
12 see any kind of a relationship or pattern showing
13 that certain, again, my question wasn't -- Let me
14 start again.

15 You did your analysis by station. Did
16 you then take the next step which goes to my
17 question, which is to determine whether or not a
18 station that had disproportionately large numbers
19 of zero viewing data points was also high up on
20 the channel locator, such that it had a high
21 channel number rather than a low channel number?

22 THE WITNESS: That would be

33

1 discernible from looking at the exhibits, but I
2 did not focus on that. I did not do that second
3 step.

4 JUDGE STRICKLER: And last question in
5 this area. Did you do any kind of correlation
6 analysis or regression to see whether or not the
7 zero viewing that occurred in a particular
8 distant location for any particular program
9 occurred at a time when that program was being
10 aired as either simultaneously or not in that
11 same local market? Do you understand my
12 question?

13 THE WITNESS: I understand the
14 question and the answer is no.

15 JUDGE STRICKLER: No, you didn't do
16 that analysis?

17 THE WITNESS: Those are all great
18 ideas though.

19 JUDGE STRICKLER: It wasn't my idea,
20 one of the witnesses conveyed it.

21 BY MR. OLANIRAN:

22 Q But in your analysis though you can

35

1 contexts.

2 JUDGE BARNETT: Did you understand the
3 question?

4 THE WITNESS: Well given that you're
5 the attorney for the MPAA, I assume you're
6 talking about Dr. Gray's use of local ratings in
7 his regression?

8 MR. OLANIRAN: The local ratings data
9 in general, as provided by Nielsen.

10 JUDGE BARNETT: And the question about
11 those was?

12 MR. OLANIRAN: The question is whether
13 or not she's making an issue zero viewing with
14 respect to the local ratings data.

15 THE WITNESS: Oh, I understand the
16 question. I did not do analysis of zero viewing
17 in the local ratings.

18 MR. OLANIRAN: Now you say in your
19 rebuttal testimony that zero viewing is higher
20 for IPG titles than for MPAA titles. Do you
21 remember that?

22 THE WITNESS: I recall, although I

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1 tell generally when the viewing distribution
2 across a broadcast day, you had access to, you
3 were able to ascertain that type of viewing
4 pattern on a broadcast date, correct?

5 A Yes.

6 Q Such that you would know that between
7 12:00 midnight and 6:00 a.m., that's generally
8 considered a low viewing period, if you will,
9 compared to the rest of the broadcast day, is
10 that fair to say?

11 A The last part was the question?

12 Q Yes.

13 A Then the answer is yes.

14 Q Okay. You're not making an issue with
15 regard to the local ratings data are you?

16 MR. BOYDSTON: Objection. What does
17 he mean by, I mean, both viewing local rating --
18 local reviewing ratings have been talked about in
19 a bunch of different contexts. Maybe you could
20 establish context.

21 MR. OLANIRAN: No, Your Honor, we have
22 not talked about local ratings in different

36

1 would love to look at the most recent version and
2 see if --

3 MR. OLANIRAN: I think it's your
4 rebuttal testimony, Page 5. I'm sorry, Table 5,
5 Page 27. Now I don't know if that table has
6 changed or if it's even in the records now.
7 Which exhibit is it?

8 THE WITNESS: I'm checking. There's
9 SA that starts --

10 MR. BOYDSTON: Your Honor, may I
11 approach with her rebuttal testimony?

12 JUDGE BARNETT: You may.

13 MR. OLANIRAN: I'm sorry, it's Page
14 27.

15 JUDGE STRICKLER: There's a table on
16 Page 27, a rebuttal to the MPAA?

17 MR. OLANIRAN: Yes.

18 JUDGE STRICKLER: I'm sorry, which
19 table?

20 MR. OLANIRAN: It's supposed to be
21 table 5. I have my numbers --

22 JUDGE BARNETT: It's 27.

37

1 JUDGE STRICKLER: What kind of
2 figures?
3 JUDGE BARNETT: Is it a figure or a
4 table?
5 MR. OLANIRAN: It's 37.
6 JUDGE BARNETT: Oh, Page 37?
7 MR. OLANIRAN: Oh.
8 THE WITNESS: Well according to Table
9 5, in cable for example, IPG had 57.9 percent of
10 its programs that had zero viewing for all
11 broadcasts. Whereas the MPAA had 46.7 percent of
12 zero viewing for all broadcasts of that title.
13 And if you look at the just overall
14 quarter hours, IPG had zero viewing for 90.5
15 percent of the quarter hours. And MPAA had zero
16 viewing for 74.7 percent of the quarter hours.
17 BY MR. OLANIRAN:
18 Q Is your point that the zero viewing
19 issue affects IPG more than it affects MPAA?
20 A My point is that there's a lot of zero
21 viewing. Including zero viewing for, you know,
22 all broadcasts of titles. And that it is

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1 disproportionately happening with IPG titles
2 relative to MPAA titles.
3 Q Okay. In making that point, the
4 latter point, did you check to see, for example,
5 what percentage of IPG's screen titles fell
6 within 12:00 midnight and 6:00 a.m. in the
7 morning? Versus MPAA.
8 A Well I did look at the proportion of
9 titles at different times of day, as you
10 indicate. And we know from Table 1, I believe,
11 that IPG programs are shown at less, at times of
12 day where there are fewer viewers, on average.
13 Q Okay.
14 A But how the, whether or not the zero
15 estimates are correlated with that, I don't know.
16 I mean, and the big issue of course is that some
17 of the zeros are true zeros and some of the zeros
18 may not be true zeros.
19 So even if you did that, you can't
20 parse out which are the true zeros and which
21 aren't the true zeros. That's the problem.
22 Q Well my question really is, you're

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1 making the statement that the zero values, the
2 percentage of zero values are biased against IPG.
3 And my question simply is did you do a test to
4 see whether or not IPG actually had more titles
5 in those periods, particular between 12:00
6 midnight and 6:00 a.m., where this low viewing in
7 general, where you would expect to see fewer
8 viewing, versus MPAA?
9 A I'm sorry, I thought that I answered
10 that. It's certainly all in here. I'm assuming
11 we don't want to take the time for me to find the
12 specifics, but I can tell you that overall IPG's
13 average show is shown at a time of day with fewer
14 viewers.
15 And that's -- I don't mean viewing of
16 the compensable titles, I mean using, you know,
17 Nielsen national time of day viewership members.
18 IPG's are shown, on average, at lower viewing
19 times. So I don't know if that answers your
20 question or not.
21 Q It does in part. But I was actually
22 referring to the actually Nielsen data on which

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1 you rely on for essentially testifying that the
2 zero viewing is flawed.
3 You did not use that to determine the
4 portion of IPG's programs that fell within, say
5 between 12:00 and 6:00? If you didn't, that's
6 fine. I just need to know.
7 A Yes, no, no, no. But I mean it's --
8 I did not look at the proportion of zero -- I
9 mean I did not focus on, you know, provide a
10 chart like this to show the allocation of zero
11 viewing across time of day. If that's the
12 question.
13 JUDGE STRICKLER: Excuse me. Another
14 question for you, Dr. Robinson.
15 A moment ago you made the distinction
16 between true zeros and zeros that are not true
17 zeros with regard to the Nielsen. The question
18 was asked in regard to another witness in the
19 case, I want to ask it to you as well.
20 One of your critiques of the Nielsen
21 data is that each sampling point, there's an
22 error surrounding it and you don't have these

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1 standard errors and that's one of the problems.
 2 So at any given sampling point, say
 3 for argument sake there's a two associated with
 4 the Nielsen sample, there's going to be an error
 5 around that. Within a certain level confidence,
 6 you're going to be below -- you might be below
 7 two, you might be above two.

8 THE WITNESS: Right.

9 JUDGE STRICKLER: And one argument can
 10 be, and has been made in this case by some
 11 witnesses, that when you do enough sampling, that
 12 the zeros and the other numbers tend to smooth
 13 out. The question that I have is this.

14 If you have, as in my hypothetical you
 15 have a two, there's a confidence interval around
 16 the two. That's the error associated with it.

17 But when you have a zero, you could
 18 have an error associated with it. It could
 19 either be more than zero, or zero, but it can't
 20 be less than zero. Because nobody calls other
 21 people up and says, stop watching that show.

22 THE WITNESS: Yes.

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1 regression is that it assumes that all the
 2 observations are independent. If you stick with
 3 that assumption then when you look at the, you
 4 talked in your hypothetical setup, you talked
 5 about the standard error. And the sort of the
 6 smoothing aspect.

7 And I think that there's -- I want to
 8 describe why it doesn't smooth. I know, I
 9 assume there's been some testimony or there may
 10 have been some about why it might smooth, but it
 11 doesn't smooth. And let me try to explain why.

12 If you think about the standard error,
 13 it reflects the distribution around the sample
 14 mean. The true mean as it were.

15 So when you, one way that we estimate
 16 standard errors is using the standard deviation.
 17 The standard deviation is simply a computation
 18 based on a list of numbers. Right?

19 Now in this case, when we have a lot
 20 of, when we have zero, this is a problem of, kind
 21 of this rare event problem. So just because you
 22 get a zero and your standard deviation is zero,

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1 JUDGE STRICKLER: Or so we assume. So
 2 how does that problem, with the existence of sort
 3 of a closed range, if you will, one directional
 4 range around zero, if at all, affect the
 5 usefulness of the Nielsen data given the
 6 existence of the zeros? And do you have to
 7 perform any different regressions to account for
 8 that.

9 THE WITNESS: Well the use of the
 10 Poisson Regression essentially accounts for that,
 11 for the bounded nature of the left-hand side of
 12 the distribution.

13 The issue -- one of the issues about
 14 the Poisson Regression is that it assumes that
 15 all of the observations are independent. And I
 16 know there's been discussion, it's not clear
 17 whether the observations are dependent if a
 18 viewer is watching a half hour show and they're
 19 watching one 15 minute period, are they more
 20 likely to be watching in the next 15 minute
 21 period. A probably yes.

22 So one problem with a Poisson

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1 doesn't mean that the true standard error is
 2 zero. Right?

3 It just means you have a bad estimate,
 4 that you can't use the standard deviation to
 5 estimate the standard error.

6 And in fact, there is, you know,
 7 literature about this and how you might solve
 8 this problem. And there's something called the
 9 Rule of Three that Cochran suggests, et cetera,
 10 but at any point, big picture, the standard error
 11 is not well estimated using the standard
 12 deviation in that case.

13 But conceptually we know there's a
 14 standard error. When we have these different --
 15 these are different -- the N is not increasing.

16 In order to have this idea that it's
 17 going to smooth out, it has to be that you think
 18 that N is increasing.

19 I agree that if we have a sample, the
 20 bigger, the more, the higher N, the more draws we
 21 get from the box, the lower the standard of
 22 error. But, that's not what's going on here.

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1 We're not picking more draws, we're adding
2 together two or three or four, whatever,
3 independent, we're assuming independent because
4 the way Dr. Gray did his Poisson Regression,
5 adding these independent variables together. And
6 they're each associated with a standard error.

7 And with standard error of the sum, is
8 going to equal the square root of the squares of
9 the standard errors of the individual component.

10 Those have a fixed end related to
11 whatever it was for that particular sample. For
12 that particular random variable.

13 So there's no N in that formula for
14 the sum that's increasing. And if it's
15 independent there's no covariant elements in the
16 formula. It's just the positive numbers. And so
17 therefore it's increasing. Did that help?

18 JUDGE STRICKLER: Yes.

19 MR. OLANIRAN: Now could you repeat
20 that?

21 (Laughter)

22 THE WITNESS: For just a moment I

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1 be using the real values and not the predicted
2 values.

3 Q And when you say the data, what are
4 you referring to?

5 A Well I mean, if you think that the
6 data are reliable then you should be using the
7 data and not using your estimates of the data.

8 Q And by the data, which data, again,
9 are you referring to?

10 A The 2000 to 2003 Nielsen distant
11 viewing data.

12 Q I was trying to make sure I understood
13 what you meant by the data. And your argument is
14 that for the periods for which he had the data,
15 he should have used the actual data. And then
16 for the remainder of, I'm not sure --

17 A Right. So he uses 2000 to 2003 in
18 order to predict 2004 to 2009.

19 Q Right.

20 A Then he needs to use measures of
21 distant viewing in order to do his computations.

22 Q Correct.

46

1 thought you were serious.

2 BY MR. OLANIRAN:

3 Q You identified some titles in your
4 rebuttal testimony that you said had no viewing
5 at all across all stations in the Nielsen data,
6 correct?

7 A Yes.

8 Q Remember those? All right. Do you
9 know how Dr. Gray accounted for those types of
10 titles in his regression analysis?

11 A Well I know that, at least in some
12 versions of his analysis, he replaced the zero
13 viewing with his predictions.

14 In other words, he has actual data,
15 but he runs a regression in order to come up with
16 a prediction model. And then he predicted the
17 actual data that he used to create the prediction
18 model and he used the predictions rather than the
19 actual.

20 And it seems to me, you'd either think
21 the data is correct or you think the data is not
22 correct. If the data is correct, than you should

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1 A So he replaces the actual data for
2 2000 to 2003 with basically his estimates of
3 those using his predicted model. It makes sense
4 to use the predicted model to predict 2004 to
5 2009 because you don't have data for that. But
6 you have data for 2000 to 2003.

7 Q I understand now. So you're saying
8 for '04 through '09, he should have used the
9 predicted model. For '00 to '03 he should have
10 used the actual data.

11 A Correct.

12 Q Now doesn't that then get back also
13 the problem of zero viewing? Doesn't that
14 perpetuate the issue that we're talking about?

15 A Well it highlights the issue, but it's
16 -- if he thinks that he should use the predicted
17 data instead of the actual data, to me that
18 suggests that he thinks the data is not reliable.

19 Q Okay. Now notwithstanding all of the
20 criticism that you have of the year, that of Dr.
21 Gray's data, you actually said several times
22 during your testimony yesterday that it was

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1 actually a reasonable way to calculate the
2 relative market value, did you not?

3 A In the same context that I described
4 earlier where you want to use the data that you
5 have available and come at it from as many
6 directions as you can and look for a convergence
7 and understanding, I think what he did with the
8 modifications that I think are, that I made, is
9 reasonable to put in the mix.

10 MR. OLANIRAN: Thank you. I have no
11 further questions, Your Honor.

12 MR. MACLEAN: Your Honor, if I could
13 just have five minutes to get set up? And
14 perhaps we could shorten our morning break so we
15 can get as much done as we possibly can before
16 the next witness.

17 JUDGE BARNETT: Or we can call this
18 our morning break and tough it out until noon.

19 MR. MACLEAN: That's what I was
20 suggesting.

21 JUDGE BARNETT: okay. So we'll recess
22 for 15 minutes.

50

1 (Whereupon, the above-entitled matter
2 went off the record at 10:05 a.m. and resumed at
3 10:25 a.m.)

4 JUDGE BARNETT: Please be seated. Mr.
5 MacLean?

6 MR. MACLEAN: Thank you, your Honor.
7 Your Honor, before we begin, I'd like to offer
8 SDC Exhibit 643. This is an excerpt from Dr.
9 Robinson's testimony in the 1999 case. It is the
10 designated Dr. Robinson's entire testimony from
11 the 1999 case and our written rebuttal case, and
12 SDC 643 is an excerpt containing only those
13 sections that we specifically rely on.

14 (Whereupon, the above-referenced
15 document was marked as SDC Exhibit No.
16 643 for identification.)

17 MR. BOYDSTON: No objection.

18 MS. FLOVNIK: No objection.

19 JUDGE BARNETT: 643 is admitted.

20 (Whereupon, SDC Exhibit No. 643 was
21 received into evidence.)

22 MR. MACLEAN: I'm pleased to say that

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1 that excerpt already contains my cross-
2 examination of Dr. Robinson related to her use of
3 the value in here and the statistics, so I won't
4 need to go through that material with her.

5 JUDGE BARNETT: Oh, too bad.

6 BY MR. MACLEAN:

7 Q Dr. Robinson, could you please turn to
8 SDC Exhibit 640, which is Dr. Erdem's rebuttal
9 testimony at page 28?

10 MR. BOYDSTON: Which page?

11 MR. MACLEAN: Page 28.

12 BY MR. MACLEAN:

13 Q Now, Dr. Robinson, at the bottom of
14 page 28, it's table 10, and it leads over onto
15 page 29. These, with one small correction that
16 Dr. Erdem made for satellite 2004, are Dr.
17 Erdem's proposed allocations. That's your
18 understanding, correct?

19 A Yes.

20 Q And then if you turn to page 29, in
21 the second satellite 2008, Dr. Erdem has an
22 allocation for IPG of zero percent; is that

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1 right?

2 A Yes.

3 Q And you specifically referenced this
4 2008 satellite allocation as an example of where
5 Dr. Erdem's Nielsen data missing title was a
6 defect that harms IPG; is that right?

7 A Yes, I recall what I said is that, in
8 2008, his data did not have any IPG titles in
9 there; and, therefore, he couldn't come up with a
10 viewership number.

11 Q And that, in your view, was a serious
12 defect in Dr. Erdem's methodology?

13 A An example of the defect of not having
14 data for all the titles.

15 Q Could you please turn to IPG Exhibit
16 276, the revised version?

17 A Okay.

18 Q Now, these are your proposed
19 allocations for satellite for these proceedings;
20 is that right?

21 A Yes.

22 Q And if you look down at the devotional

53

1 section for 2008, you have zero percent, zero
2 percent, zero percent, zero percent, zero percent
3 all the way across the row, don't you?

4 A I do.

5 Q Is that because you didn't have all of
6 IPG's titles in your data?

7 A No, I think it is because of the
8 revision must have removed the title that was
9 there. So it was true with respect to the
10 earlier version of these numbers I did have the
11 title; and, therefore, I was getting a number.
12 And Dr. Erdem didn't have the values for that
13 title, so he wasn't getting a number in that
14 instance. In the revision, we now both don't
15 have the title.

16 Q Well, Dr. Erdem excluded ongoing
17 program from the get-go, didn't he? You don't
18 know what title you're talking about.

19 A I don't recall right now what the
20 title is, no.

21 Q At any rate, whatever titles IPG has
22 in satellite 2008 don't appear in your data; is

55

1 because of your ruling to exclude them, which
2 fair enough. But he knows that, and he's making
3 a suggestion that's completely at odds to the
4 fact that they're not there because you --

5 JUDGE BARNETT: Mr. Boydston, what's
6 the legal basis of your objection?

7 MR. BOYDSTON: I apologize. I didn't
8 think that through, which, of course, I should
9 have. I apologize. I withdraw, and I guess --

10 JUDGE BARNETT: Thank you.

11 MR. BOYDSTON: -- and that's what
12 piqued my interest.

13 MR. MACLEAN: And, your Honor, I would
14 ask that we not have continued objections during
15 this examination.

16 JUDGE BARNETT: Well, that's what I'm
17 trying for.

18 BY MR. MACLEAN:

19 Q In your Tribune set, whatever IPG's
20 titles are claimed for the year 2000, they don't
21 appear; is that right?

22 A There's no hours reported here in 2000

54

1 that right?

2 A In the updated version, IPG has,
3 appears to have no titles for --

4 Q Now take a look at your allocations
5 for the year, in the devotional 2000 satellite,
6 year 2000. Zeros all the way across. Do you see
7 that?

8 A I do.

9 Q So whatever IPG titles -- do you know
10 what titles IPG claims in the devotional category
11 in satellite 2000?

12 A I can look it up if you'd like me to.

13 Q Whatever they are, they're not in your
14 data, right?

15 A I don't know what you mean by not in
16 my data.

17 Q They're not in your Tribune set. If
18 they were in your Tribune set, they'd have a
19 value, right?

20 MR. BOYDSTON: Your Honor, I'm going
21 to object. This is just very disingenuous
22 because the reason that they aren't there is

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1 for IPG with the current set of claimed titles.
2 So it's either not in the data set or there isn't
3 a claimed title.

4 Q Now, if you can turn back to Dr.
5 Erdem's proposed allocations on page 28 of his
6 rebuttal testimony and take a look at the year
7 2000.

8 A Okay.

9 Q Dr. Erdem proposes a positive
10 allocation for IPG in the year 2000 based on his
11 data set, right?

12 A Yes.

13 Q So at least with respect to the year
14 2000, Dr. Erdem's data set is actually more
15 complete with respect to IPG's titles than your
16 data set.

17 A If you're saying that these numbers
18 are positive and, therefore, he's including some
19 broadcasts in his analysis and my number does not
20 have any broadcasts, then I agree with you.

21 Q While we're on the subject of data
22 sets, where did you get your cable CDC data?

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1 A From counsel.
 2 Q Counsel for whom?
 3 A IPG.
 4 Q Do you know where counsel for IPG got
 5 it? Do you know?
 6 A From CDC.
 7 Q Counsel got it directly from CDC?
 8 A I don't know.
 9 Q Where did you get your subscriber and,
 10 subscriber count and fees paid data with respect
 11 to your satellite analysis?
 12 A Well, all the data that I got I got
 13 from counsel.
 14 Q For IPG?
 15 A IPG.
 16 Q Were you aware that you had CDC data
 17 for satellite and a non-CDC data set for cable?
 18 I'm sorry, strike that. Did you know that you
 19 had a CDC data set for cable and a non-CDC data
 20 set for satellite?
 21 A Yes, that sounds right.
 22 Q Did you inquire who prepared the non-

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1 CDC data set that you had for satellite?
 2 A If I go back and look at my report,
 3 I'm sure I identified where the data sets --
 4 Q Go ahead.
 5 A In any case, it came from counsel, so
 6 I don't know if that answers your question or
 7 not.
 8 Q No, my question was whether you know
 9 who prepared it.
 10 A I'm a little bit confused about the
 11 numbering of the exhibits. Can somebody tell me
 12 where I can find my --
 13 MR. MACLEAN: I think she's looking
 14 for her, one of her direct testimonies.
 15 MR. BOYDSTON: May I just go ahead and
 16 page the beginning of it?
 17 JUDGE BARNETT: You may.
 18 DR. ROBINSON: I think I might have
 19 what I need in a rebuttal, the report I'm looking
 20 at.
 21 MR. MACLEAN: Okay.
 22 DR. ROBINSON: The data of the

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1 satellite statements of account came from IPG.
 2 BY MR. MACLEAN:
 3 Q And who at IPG prepared that, those
 4 data?
 5 A I'm not sure.
 6 Q You did not, certainly did not prepare
 7 the data for subscriber count for satellite, did
 8 you?
 9 A Correct. By prepare, you mean take
 10 off the satellite statement of account and look
 11 at --
 12 Q Did you look at the satellite
 13 statements of accounts?
 14 A I looked at some examples.
 15 Q Who chose the examples for you to look
 16 at?
 17 A I just wanted to know what it looked
 18 like. I don't even, I don't recall.
 19 Q You are, of course, aware of Mr.
 20 Galaz's criminal record with respect to fraud
 21 involving cable royalty proceedings?
 22 A I'm really not aware of anything about

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1 that.
 2 Q So not being aware of it, you didn't
 3 question or examine whether it was, you, as an
 4 expert, would want to rely on a data set prepared
 5 by Mr. Galaz?
 6 A I had the satellite statements of
 7 account. I looked at a few. I had the data set
 8 given to me by counsel, which I understood to
 9 come from IPG, and I used it.
 10 Q You didn't have any involvement in the
 11 decision whether to use a data set prepared by
 12 IPG or a data set prepared by CDC?
 13 A No, I was -- no. But I had all the
 14 satellite statements of accounts, but I didn't
 15 create the data myself from them.
 16 Q Where did you get the distant viewing
 17 data that you used in the formulation of your
 18 time of day criterion, your time of day factor?
 19 A All my data came from counsel. I
 20 mean, do you want me to page through here and see
 21 what I --
 22 Q I mean, is your answer it came from

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1 counsel?

2 A Yes.

3 Q Did you have any role in selecting
4 what viewing data you would use in calculating
5 your time of day factor?

6 A What I wanted for that factor was
7 simply an average viewership estimate for each of
8 the 96 15-minute increments in the day, and
9 that's what I got so . . .

10 Q You simply got the averages. You
11 didn't get the underlying data that went into
12 those averages?

13 A No, I think I did sum it up.

14 Q So you're the one who prepared the
15 averages based on data you received from IPG's
16 counsel?

17 A Such a long time ago, you know. I
18 think that's correct, though.

19 Q I'm sorry. Which is correct? That
20 you summed it up or IPG summed it up?

21 A Oh, I think I summed it up.

22 Q From data that IPG provided you?

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1 A Yes.

2 Q And what was that data?

3 A I can't find in front of me right now
4 any detail on it, but my understanding is that it
5 was Nielsen data on viewership in those quarter
6 hours.

7 Q Wasn't it the varied HHVH distant
8 viewing data that you're criticizing MPAA for
9 relying on?

10 A Probably. Well, I don't know what you
11 mean because that's -- I think maybe you're
12 talking about two different things because I did
13 sum up the 2000 to 2003 data and used that, but I
14 also had other Nielsen data with the 96 quarter-
15 hours that was based over, my recollection is, a
16 longer period.

17 Q So which did you use for your time of
18 day factor?

19 A As you can see in the report, I used
20 the -- I computed both, and I think I have a
21 table in the report that compares them. And then
22 I used the, not the 2000 to 2003 data, the other

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1 one.

2 Q Where did you get that data?

3 A I think I just said I got it from
4 counsel.

5 Q What's your understanding of the
6 origin of that data?

7 A That it comes from Nielsen.

8 Q That counsel got it from Nielsen?

9 A I don't know the path by which counsel
10 got the data.

11 Q So I know we covered this before, but,
12 just to get us back onto the right track, your
13 basic methodology involves a calculation based on
14 broadcast hours, which you use as a volume
15 measure, times one of three factors, each of
16 which you use as a separate value measure; is
17 that right?

18 A As shown in that summary table, I
19 believe it's table eight, each of those three
20 factors are identified and they can be used
21 independently or together.

22 Q Well, why don't we take a look at, as

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1 an example, IPG Exhibit 260?

2 A Okay.

3 Q And let's first take a look at your
4 IPG share of hours column, column K.

5 A Okay.

6 Q And this is simply a measure based on
7 broadcast hours, number of broadcast hours,
8 right?

9 A Correct.

10 Q Broadcast hours that's broadcast into
11 the air irrespective, this column here standing
12 alone, irrespective of the number of distant
13 subscribers to which it goes?

14 A Correct.

15 Q And this is, in this case, you have
16 described it as your volume factor, correct?

17 A Yes.

18 Q Now, in this case, the case that we're
19 here for today, you multiplied the broadcast
20 hours by your scaling factors, your value
21 factors, to arrive at your proposed allocation,
22 correct?

65

1 A Just exactly the way Dr. Erdem did,
2 yes.

3 Q Now, in the 1999 case, you also used
4 broadcast hours as a measure, right?

5 A Yes.

6 Q But you didn't multiply it by your
7 other factors; is that right?

8 A Which highlights that this is a
9 completely different analysis. Because of the
10 nature of that analysis, the numbers were not, it
11 is not mathematically appropriate to multiply
12 them. But in this case, it is.

13 Q Well, in that case, it wasn't because
14 you didn't design it that way, correct?

15 A It was not designed the same way
16 correctly.

17 Q Why the difference between how you
18 designed the analysis in the 1999 case and how
19 you designed the analysis in this case?

20 A There were various constraints in the
21 prior case that did not allow me to prepare it
22 the way it is prepared here.

67

1 2004, looking at column B for devotional, when
2 you say 85.45 percent, that would suggest that,
3 according to this factor, one hour of IPG
4 programming is, on average, worth 85.45 percent
5 of one hour of SDC programming?

6 A That's exactly how you interpret it.
7 And if you look over, if you see in column A, you
8 see the 22.86 percent, the number of hours. And
9 then you look over at the range in column E from
10 14 percent to 20 percent. So you can see that,
11 in the range of the value, it's always lower. So
12 we look at the hours, so IPG has 23 percent of
13 the hours. But by these metrics, the average
14 hour is worth less. And so in the whole range,
15 you're always getting something a little bit less
16 or a lot less.

17 Q And in that particular example where
18 14.18 percent is the bottom of the range in 2004
19 in devotional, presumably that's because it is
20 the product of 22.86 percent times 55.77 percent,
21 correct?

22 A That being the lowest one, yes.

66

1 Q Like what?

2 A I really cannot remember the details,
3 but I had wanted to be able to do it the way it's
4 done here but I didn't have the capacity for
5 whatever the data structure or other constraints
6 were that I don't recall right now.

7 JUDGE STRICKLER: I have a question
8 for you with regard to Exhibit 260, prime or
9 whatever we're calling it, in column D, time of
10 day, you express it as a percentage. How do you
11 express time of day as a percentage?

12 DR. ROBINSON: In this instance, if
13 you look at the, if you look at the panel at the
14 very top of the page and you look in the middle
15 part of that panel, do you see how it says value
16 of an IPG hour relative to a non-IPG hour?

17 JUDGE STRICKLER: Right.

18 DR. ROBINSON: So a non-IPG hour here
19 would be 100 percent, so it's kind of more like a
20 ratio.

21 BY MR. MACLEAN:

22 Q So to take an example, in the year

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1 Q And, likewise, the product on the
2 other side, 20.20 percent, would presumably be
3 the product of 22.86 percent times 85.45 percent?

4 A Which is the high number, yes.

5 JUDGE STRICKLER: I may be missing
6 something then. So you say the 100 percent
7 equals the value of the non-IPG hour or otherwise
8 known as the SDC hour.

9 DR. ROBINSON: Right.

10 JUDGE STRICKLER: Okay. So how do you
11 determine, in 2004 for example, what calculation
12 do you do to say that for time of day it's 85.45
13 percent as the ratio?

14 DR. ROBINSON: You mean how do I --

15 JUDGE STRICKLER: How do you compute
16 the 85.45? Take me through the steps by way of
17 example.

18 DR. ROBINSON: So I take, I look at
19 all the data. Let's take a particular broadcast
20 or a particular title. So say there's one title
21 for each of them. You look at the time of day of
22 the broadcast.

69

1 JUDGE STRICKLER: Let's pick a time
2 for argument's sake. Let's say noon to 1:00 in
3 the --
4 DR. ROBINSON: No, no, no, but it's
5 all the times. It's the whole day. So it's --
6 here, let me -- do I have the direct --
7 MR. BOYDSTON: May I approach, your
8 Honor, to help her --
9 JUDGE STRICKLER: I think she just
10 found it.
11 DR. ROBINSON: No, I didn't. Sorry.
12 I don't think I have the direct --
13 MR. BOYDSTON: Yes, it's right here.
14 This is your direct.
15 DR. ROBINSON: Thank you. Oh, I don't
16 want the -- I want the actual report. This is
17 the table.
18 MR. BOYDSTON: Oh, I'm sorry. I
19 believe this is it. It says on the top that --
20 did I give you the right one?
21 DR. ROBINSON: Yes, you did. I'm
22 trying to figure out the fastest way to show

70

1 this. I'm almost there.
2 JUDGE STRICKLER: You're looking at
3 your direct testimony?
4 DR. ROBINSON: Yes.
5 JUDGE STRICKLER: Is this your
6 supplemental direct or your -- just tell me the
7 page. I'll figure it out.
8 DR. ROBINSON: 5A, what I call Exhibit
9 5A in my --
10 JUDGE STRICKLER: Do you know which
11 one she's looking at? Can you help me out.
12 MR. BOYDSTON: Exhibit 5A or Table 5A.
13 DR. ROBINSON: No, Exhibit 5A.
14 MR. BOYDSTON: I'm sorry.
15 JUDGE STRICKLER: Page number?
16 DR. ROBINSON: It's broadcasts by
17 quarter hour 1999 to 2009.
18 JUDGE STRICKLER: Page number, please?
19 DR. ROBINSON: Your Honor, it says
20 "Exhibit IPG-5A amended," if that helps. There's
21 no page number.
22 MR. BOYDSTON: This is in the amended

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1 --
2 DR. ROBINSON: It's in 905, if that
3 helps.
4 MR. BOYDSTON: No, those are internal
5 numbers of mines. This is Dr. Robinson's amended
6 --
7 JUDGE STRICKLER: The supplemental --
8 MR. BOYDSTON: No, the supplemental
9 thing was my mistake. There's no such thing as
10 the supplemental. The supplemental is within her
11 amended direct statement.
12 JUDGE STRICKLER: I understand.
13 MR. BOYDSTON: It's not a separate
14 animal, and I made that mistake and I'm going to
15 clear it up later on when we get the exhibits
16 straightened out. I apologize for that. It's in
17 her amended --
18 JUDGE BARNETT: I'm looking at Exhibit
19 IPG-5A amended.
20 JUDGE FEDER: Hours of IPG claimed
21 titles in 2004 to 2009, example by distant
22 subscribers?

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1 DR. ROBINSON: I think it would be in
2 Table 5A maybe.
3 JUDGE FEDER: Exhibit IPG-5A amended.
4 DR. ROBINSON: Well, let me see if I
5 can just describe it in words.
6 JUDGE STRICKLER: You're on Table 5A,
7 is that what you're saying?
8 DR. ROBINSON: No, let me just see if
9 I can describe it in words. So we have every
10 quarter hour and every quarter hour is, there's a
11 percentage of viewership that adds up to 100
12 percent in the day. It's based on Nielsen
13 national average.
14 So then if you look at how many
15 broadcasts IPG had in a day in that quarter hour
16 --
17 JUDGE STRICKLER: That's where you're
18 losing me. That IPG had in that day?
19 DR. ROBINSON: Yes, all 96.
20 JUDGE STRICKLER: All 96 quarter
21 hours.
22 DR. ROBINSON: Yes. So you look at

73

1 how many did IPG have in each quarter hour, how
2 many did SDC have in each quarter hour, and then
3 you do a weighted average based on the Nielsen
4 viewership. Does that make sense?

5 JUDGE STRICKLER: That I understand.

6 DR. ROBINSON: Okay.

7 JUDGE BARNETT: And then the 85.45
8 percent is the factor that you applied to the
9 22.86 percent volume number?

10 DR. ROBINSON: Yes, and it reflects
11 those weighted average computations.

12 MR. BOYDSTON: Just by way of
13 assistance, if you look at Exhibit 259, I believe
14 that's where this is represented most simply.
15 It's Table 7B. But if you look at Exhibit 259,
16 the bottom table has the computation that results
17 in that number. I think that's what that is. I
18 could be wrong, but I'm pretty sure.

19 JUDGE BARNETT: Thank you.

20 BY MR. MACLEAN:

21 Q Dr. Robinson, to express it
22 mathematically, it would be, essentially, the sum

75

1 JUDGE STRICKLER: Including zeros?

2 DR. ROBINSON: Indeed. But it's not
3 -- well, I don't know what their process is.

4 BY MR. MACLEAN:

5 Q Dr. Robinson, while we're on this
6 subject, are you sure you used something, in
7 calculating those numbers, are you sure you used
8 something other than MPAA's distant HHVH data for
9 calculating your average numbers of viewers per
10 day part?

11 A That's my recollection. But if I look
12 in the report, I will be able to clarify. I'm
13 looking at which report and where it would be.
14 Okay. So on page 15, footnote 10 --

15 Q Of what?

16 A Of the same thing we were just looking
17 at.

18 Q And what was that?

19 MR. BOYDSTON: The amended direct
20 statement.

21 BY MR. MACLEAN:

22 Q In cable or satellite?

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1 product of all IPG hours and total viewers for
2 each hour divided by the sum of IPG hours to get
3 the average number of IPG hours total viewers for
4 each hour in which IPG's broadcasts were made,
5 correct?

6 A I didn't really follow that, but it's
7 the weighted average of IPG broadcasts weighted
8 by the proportion of Nielsen viewers in that
9 quarter hour relative to SDC's.

10 JUDGE FEDER: I'm sorry. That quarter
11 hour, is there any, does that take into account
12 whether that quarter hour is on a Friday or a
13 Sunday or in May or in December?

14 DR. ROBINSON: The quarter hour is an
15 average across an entire year.

16 JUDGE FEDER: Across the entire year,
17 365 days?

18 DR. ROBINSON: Yes.

19 JUDGE FEDER: Okay, thank you.

20 JUDGE STRICKLER: And that's based on
21 viewership data from Nielsen?

22 DR. ROBINSON: Yes.

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1 A This happens to be satellite. May I
2 continue?

3 JUDGE BARNETT: Page number again?

4 DR. ROBINSON: Fifteen.

5 JUDGE BARNETT: Thank you.

6 BY MR. MACLEAN:

7 Q Okay. Go ahead.

8 A So the footnote reads, "The Nielsen
9 national viewing data was produced as part of
10 MPAA's backup materials in the current proceeding
11 and is referred to by Dr. Gray in his direct
12 testimony in the current proceeding." So the
13 Nielsen -- so I received it from counsel, but
14 counsel got it, I guess, in the production from
15 MPAA.

16 Q Okay. Well, so that could be either
17 MPAA's distant HHVH data for 2000 through 2003 or
18 it could be MPAA's local meter data for 2000
19 through 2009, right? One or the other?

20 A Well, I refer to page 18 of his
21 testimony, if we want to go look there.

22 Q So we can find the answer there,

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1 whatever it is? You don't know it sitting here
2 today?

3 A Well, again, I recall a comparison in
4 my own report, which I can look for if you'd
5 like.

6 Q Okay. Let's go back to broadcast
7 hours for a second because this, of course, is
8 the factor that's being scaled, right?

9 A Correct.

10 Q Which means that, naturally, more
11 broadcast hours in your analysis will equate to
12 more value?

13 A As in Dr. Erdem's and as in Dr.
14 Gray's. All three of us do the same thing.

15 Q Does Dr. Erdem use hours?

16 A Yes, he does.

17 Q Where does Dr. Erdem use hours?

18 A As a practical matter, he computes
19 average -- well, he computes viewership. And if
20 you apply the average viewership that he computes
21 to the number of hours, then you would have the
22 same process that you have here.

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1 Q And where does Dr. Erdem compute or
2 apply the average viewership to any number of
3 hours?

4 A Well, it's mathematically equivalent
5 to have a total. He does it as a total. You
6 take the total and then you divide it by the
7 number of hours, and then you have the average.
8 So it's mathematically identical.

9 Q Where does he compute a total of
10 hours?

11 A He computes the total viewership.

12 Q Actually, Dr. Erdem just multiplies
13 ratings times subscribership, right?

14 A Well, okay. But he calls it
15 viewership. Those are his estimates of
16 viewership.

17 Q But he doesn't incorporate number of
18 hours, does he? Either of those factors? I
19 won't ask you to speak for Dr. Erdem. Let's just
20 focus on yours here.

21 Do you have any reason to believe that
22 a one-hour program will attract twice as many

79

1 subscribers as a half-hour program?

2 A What do you mean by attract
3 subscribers? Are we talking about their decision
4 whether or not to sign up for the CSO?

5 Q Well, ultimately, when we're looking
6 at the value of programming to a CSO, it's the
7 number of subscribers it attracts, right?

8 A I agree with that, yes.

9 Q Any reason to think that a one-hour
10 program attracts twice as many subscribers as a
11 half-hour program?

12 JUDGE STRICKLER: Attracts as many
13 subscribers to subscribe?

14 MR. MACLEAN: Of course. Right.
15 Thank you, your Honor.

16 JUDGE STRICKLER: Thanks a lot.

17 DR. ROBINSON: If you're asking me if
18 the, you know, what the characteristics are of a
19 program that might influence a subscriber's
20 decision to subscribe, do I think that the length
21 of program might be one of the characteristics
22 that you would consider? I would say yes.

80

1 BY MR. MACLEAN:

2 Q To the degree of a one-hour
3 programming attracting twice as many as a half-
4 hour programming?

5 A I would not, I have no, I have no
6 reason to believe that.

7 Q But that's the way your factor would
8 be applied.

9 MR. BOYDSTON: Objection. That
10 misstates her testimony and misstates her
11 methodology.

12 DR. ROBINSON: I have absolutely no
13 idea what you mean.

14 JUDGE BARNETT: Sustained.

15 BY MR. MACLEAN:

16 Q A program with an equal number of
17 broadcasts in her methodology, or two programs
18 with an equal number of broadcasts, one being an
19 hour long and one being a half an hour long, the
20 hour-long program would carry twice as much value
21 as the half-hour program in your broadcast hours
22 factor.

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1 MR. BOYDSTON: Same objection.
 2 JUDGE BARNETT: Is that a question,
 3 Mr. MacLean?
 4 BY MR. MACLEAN:
 5 Q Doesn't it?
 6 A If you're asking for clarity on the
 7 volume measure, what I can tell you is that the
 8 volume reflects minutes of broadcasts and not
 9 broadcasts.
 10 Q Okay. I think everybody understood
 11 that. Could you answer my question as to whether
 12 twice as many minutes would equate to twice as
 13 much value in your methodology?
 14 A Every additional minute of
 15 broadcasting in this methodology, since that's
 16 the volume, generates additional value, yes.
 17 Q Do you have any reason to believe that
 18 a daily weekday program would attract five times
 19 as many subscribers to the CSO, to subscribe to
 20 the CSO, as a regular once-a-week program?
 21 A Well, hold on --
 22 MR. BOYDSTON: Your Honor, I'm going

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1 to object. I think this goes beyond the scope of
 2 her expertise, frankly. She is not testifying as
 3 an expert on television shows and their
 4 characteristics.
 5 JUDGE BARNETT: Legal basis?
 6 MR. BOYDSTON: I think it's beyond the
 7 scope of her expertise.
 8 JUDGE BARNETT: Okay. Mr. MacLean?
 9 MR. MACLEAN: Your Honor, in that
 10 case, I'd move to strike Dr. Robinson's proposed
 11 allocation.
 12 MR. BOYDSTON: Your Honor, no, because
 13 the allocation is based upon the statistical
 14 analysis she's talking about.
 15 JUDGE BARNETT: Overruled. You're
 16 inquiring about her analysis, and she can answer
 17 the question if she can answer the question. Can
 18 you restate the question?
 19 MR. MACLEAN: Yes, your Honor.
 20 BY MR. MACLEAN:
 21 Q Do you have any reason to believe that
 22 a daily weekday program aired five times a week

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1 will attract, on average, five times as many
 2 subscribers to subscribe to that CSO as a weekly
 3 program of the same length?
 4 MR. BOYDSTON: Objection, incomplete
 5 hypothetical.
 6 JUDGE BARNETT: Overruled.
 7 DR. ROBINSON: None of the analyses in
 8 this case conducted by Dr. Erdem, Dr. Gray, or
 9 myself are a clear model of subscribership. So
 10 we can talk about what that model of
 11 subscribership might look like if we get it --
 12 BY MR. MACLEAN:
 13 Q I'm only asking about your analysis,
 14 and the answer is yes or no.
 15 A I think the characteristics of the
 16 show matter for subscribers' decisions about
 17 whether or not to subscribe, and one of the
 18 characteristics being how frequently the show is
 19 shown. I'm sure it's, quite plausibly, a factor.
 20 Q A factor --
 21 A And no opinion as to the value of that
 22 factor.

84

1 Q I'm sorry?
 2 A I don't have an opinion as to the
 3 order of magnitude of that factor.
 4 Q But your answer in that regard doesn't
 5 come out of your expertise. That's just your
 6 understanding of what may or may not attract
 7 people to watch shows.
 8 A Well, I don't know. As an economist,
 9 you want to look at economic factors. I have
 10 expertise in looking at how things are valued and
 11 economic ages and how they value things and how
 12 you value things. So is this something I would
 13 consider if I were, if I had subscriber-level
 14 information and I was considering a model, would
 15 I consider that? Yes.
 16 Q Well, and would you consider it in the
 17 sense of valuing a daily program, a five-day-a-
 18 week program, on average, more than a one-day-a-
 19 week program?
 20 A So your question is do I think that a
 21 five-day-a-week program has more value than a
 22 one-day-a-week program?

85

1 Q Yes.

2 A I mean, there's a lot of other

3 factors, and it depends on the other

4 characteristics. But, you know, on the face of

5 it, it would seem plausible that that's what the

6 data would show.

7 Q Okay. So you take that volume factor

8 and you multiply it by your, well, I'll call them

9 scaling factors, your value factors.

10 A Okay.

11 Q So if you could turn to your amended

12 written direct testimony, and I believe it's --

13 well, let's do cable and then the written direct

14 testimony of cable, although I believe your

15 satellite testimony has something similar at any

16 rate.

17 MR. BOYDSTON: Your Honor, may I

18 approach?

19 JUDGE BARNETT: You may.

20 MR. MACLEAN: Page 20.

21 JUDGE STRICKLER: Page 20 of which

22 document?

86

1 MR. MACLEAN: This is page 20 of her

2 -- and I'm talking about the supplemental

3 portion, your supplemental testimony that is a

4 part of your amended written direct testimony,

5 cable, page 20.

6 DR. ROBINSON: So that page of text?

7 MR. MACLEAN: Yes.

8 DR. ROBINSON: Okay, I think I'm

9 there.

10 MR. MACLEAN: Okay. And I'm looking

11 at paragraph 20 and this --

12 DR. ROBINSON: I must be on the wrong

13 document.

14 MR. BOYDSTON: May I approach?

15 JUDGE BARNETT: You may.

16 MR. MACLEAN: Oh, I think I see what's

17 --

18 JUDGE BARNETT: What page did you say

19 again, 20?

20 MR. MACLEAN: Page 20, but this would

21 be in the supplemental portion.

22 JUDGE BARNETT: Is this a short, like,

87

1 half a paragraph on the top of the page?

2 MR. MACLEAN: You know what? I

3 apologize. I think this was my fault. I meant

4 to say paragraph 20, but it starts on page 16.

5 Sorry.

6 DR. ROBINSON: Okay.

7 BY MR. MACLEAN:

8 Q Okay. And really this paragraph is a

9 brief description of kind of the thinking behind

10 your valuation factors. Let me just read this

11 and see if this purpose is right. I'm looking at

12 the second sentence in paragraph 20, "As

13 discussed in my opening report, ceteris paribus -

14 -" first of all, ceteris paribus, that's Latin,

15 right?

16 A Yes.

17 Q What does that mean?

18 A Everything else equal.

19 Q "Ceteris paribus, larger number of

20 distant subscribers to the stations re-

21 transmitting the broadcast may indicate more

22 valuable broadcasts," right?

88

1 A Right.

2 Q "Similarly, ceteris paribus, rater

3 fees paid by the CSOs re-transmitting the

4 stations showing the broadcasts may indicate more

5 valuable broadcasts," right?

6 A Yes.

7 Q "Further, ceteris paribus, more

8 viewers watching programming during the time of

9 day of the broadcast may indicate more valuable

10 broadcasts," right?

11 A Yes.

12 Q So ceteris paribus, are all things

13 equal?

14 A But that's not what that means. I'm

15 not sure what you're saying.

16 Q Ceteris paribus means other things

17 being equal. You're assuming everything else

18 about this program is equal.

19 A I'm simply trying to make a point.

20 It's kind of like when you're looking at a rush

21 and you want to control for other variables. So

22 I'm talking about this and not talking about its

89

1 interaction with other things for the moment.
 2 I'm simply saying, looking at this, holding
 3 everything else equal, that's how we would
 4 consider the direction that's --

5 Q Taking, for example, your number of
 6 distant subscribers, okay? You're assuming that
 7 all programs on a given station, for a given
 8 station will have the same number of distant
 9 subscribers for all programs, right?

10 A I'm sorry, I lost you. Say it again.

11 Q A given station will have the same
 12 number of distant subscribers for every program
 13 on that station, correct?

14 A Yes.

15 Q So your distant subscribers metric,
 16 your distant subscribers factor, assumes that
 17 every program on that station is of equal value.

18 A Well, I think that's very clear from
 19 the nature of the computations that are done and
 20 described, yes.

21 Q Sure. That's what ceteris paribus
 22 means in this context.

90

1 A Now you've lost me.

2 Q Well, do you have any basis for any
 3 assumption that each and every program on a given
 4 station contributes equally to subscribership?

5 MR. BOYDSTON: Objection, your Honor.
 6 This misstates the methodology, using --

7 MR. BOYDSTON: Sustained.

8 BY MR. MACLEAN:

9 Q Now, in the 1999 proceeding, you used
 10 a somewhat different measure of average distant
 11 subscribers for cable systems, didn't you?

12 A Yes.

13 Q In 1999, you actually used average
 14 distant subscribers per cable system; is that
 15 right?

16 A Yes.

17 Q Now, here you use total distant
 18 subscribers over all stations, right?

19 A Yes.

20 Q Why did you change that factor of your
 21 methodology from 1999 to this proceeding?

22 A Like I said, this is a different

91

1 analysis. There was, I had different constraints
 2 with respect to the data and my ability to work
 3 with them, and this is the most appropriate thing
 4 to do with this data in this proceeding.

5 Q Is it because, in 1999, the SDC had
 6 the only program that was claimed on WGN in that
 7 proceedings, whereas, in this proceeding, IPG had
 8 claims for, had claims for Creflo Dollar on WGN?

9 A Definitely not.

10 Q Now, your next factor is a fees paid
 11 factor or another factor is a fees paid factor,
 12 right?

13 A Yes.

14 Q Actually, very closely related to the
 15 distant subscribers factor?

16 A Yes.

17 Q Now, cable systems pay fees using
 18 formulas based upon the number of distant
 19 subscribers, the number of stations transmitted,
 20 factors such as that, correct?

21 A Correct.

22 Q Now, in the 1999 proceedings, on the

92

1 other hand, rather than aggregating fees paid, as
 2 you've done in this proceeding, you used, and do
 3 you recall your fee-generation matching game that
 4 we went through in those proceedings?

5 A I don't recall a game.

6 Q A fee generation category matching
 7 analysis?

8 A Yes.

9 Q Now, in the 1999 proceeding, that
 10 particular methodology failed because of some
 11 methodological errors that you, eventually,
 12 conceded to; is that right?

13 A I think that -- I do recall there were
 14 some errors. The transcript stands for itself.

15 I'll point out that, in that case, because I
 16 didn't have the capacity to do what I did here, I
 17 did the matching game -- you got me there -- the
 18 matching process. But the matching process was
 19 very conservative compared to this process. This
 20 process is more accurate. I wanted, since I
 21 couldn't do the more accurate one, I wanted to do
 22 something which was very conservative, and so

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1 that's why I did it that way.

2 Q Are you saying that in the 1999 case
3 you were not capable of calculating an aggregate
4 number of distant subscribers?

5 A In the -- I was not able to do this
6 computation in the 1999.

7 Q Did you actually calculate a measure
8 of aggregate numbers of distant subscribers in
9 response to Judge Strickler's question during the
10 course of the hearing in the 1999 proceeding?

11 A Yes. I mean prior to the submission
12 of my report. That, I recall, was a time
13 constraint.

14 Q Now, so it's not because, again, SDC
15 had the only claimed program on WGN in 1999,
16 whereas, in this proceeding, IPG had Creflo
17 Dollar claimed on WGN?

18 A Absolutely not. I have never focused
19 on who has what or what the implications for the
20 outcome would be.

21 JUDGE STRICKLER: Even though you
22 didn't focus on it, did you know what the

95

1 Q Did it inform your thinking about the
2 methodology that you presented in your amended
3 direct statement?

4 A I really don't know what you mean by
5 that. What I'm saying is I read it, I thought
6 that the Judges had some interesting things to
7 say. And, you know, how one's mind works, I
8 really, you know, I'm not a neurologist, but, you
9 know, I have a bunch of information, I have the
10 data, I have my analysis, my methodologies, my
11 approaches, and I put it together and I do the
12 best analysis that I can do.

13 Q So you considered it?

14 A I considered it.

15 Q Understanding that you're not a
16 neurologist, are you a future teller? At the
17 time you prepared your amended direct statement
18 in this case, the Judges hadn't issued their
19 opinion in the 1999 cable case.

20 A Then I must be thinking about the 2000
21 to 2003 case. I'm not, you know, if you want me
22 to try to remember that level of detail, there's

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1 implications would be by doing it this way with
2 regard to the programs on WGN?

3 DR. ROBINSON: I was not aware whether
4 one party had it on WGN and the other one didn't
5 or any of that, if that's what you're asking.

6 JUDGE STRICKLER: That is the
7 question.

8 DR. ROBINSON: No.

9 JUDGE FEDER: Were any of the changes
10 in the methodology done in response to statements
11 in the decision that we rendered in that case?

12 DR. ROBINSON: That decision
13 certainly, you know, informed my thinking about
14 the issues here. So I would say, as a general
15 principle, yes, but I'm not sure I could tie a
16 particular change to it.

17 BY MR. MACLEAN:

18 Q The Judges' decision in the 1999 cable
19 case informed your approach in this case that
20 we're here today?

21 A Informed my thinking about the issues
22 in these proceedings.

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1 so many documents, so much data, so many
2 opinions, I don't know what else to tell you.
3 Plus, at some point, I guess there's the
4 rebuttal, so you're talking about the direct or
5 the rebuttal, I don't know. Whatever I had, I
6 considered and I used.

7 Q Well, in fact, your amended direct
8 statement in this case was submitted on July 7,
9 2014, right?

10 A Would you like me to look it up?

11 MR. BOYDSTON: Your Honor, objection.
12 This is becoming argumentative. The record can
13 speak for itself as the timing of these various
14 events.

15 JUDGE BARNETT: Sustained.

16 JUDGE STRICKLER: Well, do you have
17 the date in front of you as to the determination
18 in the 1999 proceeding?

19 MR. MACLEAN: It was in December of
20 2014, your Honor.

21 JUDGE STRICKLER: Thank you.

22 BY MR. MACLEAN:

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1 Q But I also wanted to ask whether she
2 considered, in coming up with her amended direct
3 statement in our case, whether you considered the
4 SDC's rebuttal in the 1999 case and whether maybe
5 that would have been a factor in your decision to
6 change methodologies?

7 A I made no decision to change
8 methodologies. Let's be clear. You're acting as
9 if I started with '99 and said what do I do? No.
10 I approached this fresh.

11 Q Okay. And then so let's go to your
12 third factor, which is number -- I'm sorry, one
13 moment please. Your third factor, well, your
14 other factor, time of day, we've talked about
15 that to some degree so far already. In your
16 amended direct testimony, what we just read, you
17 said, "Ceteris paribus, more viewers watching
18 programming during the time of day of the
19 broadcast may indicate more valuable
20 programming," correct?

21 A That's what it says.

22 Q Why?

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1 A Well, advertisers care about viewers
2 looking at their advertisements, and advertisers
3 are willing to pay more to advertise when they
4 can reach more viewers. They may have an opinion
5 about what kind of viewers they want to reach,
6 etcetera. But at any rate, let's just simplify
7 it and say more viewers. And that kind of
8 underlying feature of economics of this business
9 is going to influence the values here. Even
10 though the hypothetical negotiation here is
11 between the CSO and the copyright holder, the
12 underlying economics of the advertising is going
13 to matter, and that's why viewership matters.

14 Q So if that's true, then wouldn't it be
15 even more true that, ceteris paribus, programs
16 with more viewers are likely to be more valuable?

17 MR. BOYDSTON: Objection, incomplete.
18 More valuable to whom, which, of course, is the
19 current question.

20 JUDGE BARNETT: Sustained.

21 BY MR. MACLEAN:

22 Q When you said more viewers watching

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1 programming during the time of day of the
2 broadcast may indicate more valuable programming,
3 you meant more valuable programming to the CSO,
4 correct?

5 A It all plays in. The underlying
6 economics is that advertising and viewership
7 matter. With respect to the CSO, the CSO is more
8 focused on subscribers and what kind of
9 programming is going to bring in subscribers. So
10 the link, I mean, it would be great to have a
11 nice model linking subscribership and viewership,
12 and Dr. Gray and I both look at that in our
13 subscriber regression analyses. But we don't, at
14 this point, have a good model that links
15 subscribers and viewers. I'll note that Dr.
16 Erdem uses subscribers in the place of viewers in
17 order to estimate viewers in a way that, by
18 construction, makes his viewership estimates
19 incorrect.

20 JUDGE STRICKLER: A question for you,
21 Dr. Robinson. Excuse me, counsel. Viewership to
22 a CSO, a cable system operator or a satellite

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1 system operator, isn't it also not only a form of
2 consumption by its customer, isn't it also a form
3 of advertising in that, if I'm a CSO, I want
4 individuals, subscribers or would-be subscribers,
5 to view programs, like the programs, want to view
6 my programs again, and, therefore, subscribe so
7 that viewership is important because I want
8 eyeballs on my program so I can get future
9 subscriptions or retain existing subscriptions,
10 hence more money?

11 DR. ROBINSON: Yes, and I think that
12 goes, again, to this issue of how do we model
13 that relationship between viewership and
14 subscribership? So what is it that, you know --
15 some viewers are worth more because they're
16 stickier, right? Some shows are worth more
17 because people will subscribe just on the basis
18 of being able to see that show.

19 So there's a whole kind of complexity
20 to model this relationship, but, as an
21 overarching principle, without knowing what
22 happens inside that black box, viewership is in

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1 there and, ceteris paribus, everything else
2 equal, viewership up probably means that
3 everything in that black box is going to suggest
4 a higher value.

5 JUDGE STRICKLER: I understand there's
6 a level of complexity, no doubt, to what's in
7 that black box. But would you agree that
8 viewership, the difference between what a cable
9 system operator or a satellite system operator,
10 how they perceive viewership and how an
11 advertiser on a broadcast station perceives
12 viewership, the distinction that we've been
13 making is not really so clear-cut because both of
14 them want eyeballs on the program.

15 If I'm advertising my car dealership,
16 I want people to view it and have some of those
17 people come down to my dealership and buy a car
18 from me. If I'm a cable system operator, I want
19 some people to watch my program that I've decided
20 to transmit or, in this case, retransmit, so that
21 they continue to be subscribers so they come on
22 down not to my car dealership next month but they

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1 come on over to my cable system and subscribe
2 next month and I can keep charging their credit
3 card. So the distinction is, from an economic
4 point of view, a bit artificial, isn't it?

5 DR. ROBINSON: I think that's a very
6 good point and I do think that that dynamic is
7 there. Essentially, what you're saying is, as I
8 understand it, is that the cable system operator
9 is advertising its own shows by virtue of showing
10 its shows.

11 JUDGE STRICKLER: Isn't that the very
12 nature of an experience good? When you
13 experience good, you want somebody to consume so
14 they can experience it and buy more of it.

15 DR. ROBINSON: Exactly. But what I
16 would say then is that it's not of equal, kind of
17 order of magnitude proportions, so that the
18 advertiser cares who's selling cars. The only
19 thing that they care about is viewers, whereas in
20 the cable system operator it's more complicated.
21 That's a piece of it but --

22 JUDGE STRICKLER: Because the viewer

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1 is simultaneously consuming and paying for that
2 consumption and using that consumption to make a
3 decision as to whether to consume in the future.

4 DR. ROBINSON: Exactly.

5 JUDGE STRICKLER: It's that future
6 determination that's parallel to the automobile
7 dealer. When I watch a car dealer or when I
8 watch a commercial for an automobile dealership,
9 I'm not paying to take a spin around the block.

10 DR. ROBINSON: Exactly.

11 BY MR. MACLEAN:

12 Q Now, your time of day methodology,
13 although based on viewership-related information,
14 does not distinguish between the number of
15 viewers between program by program; is that
16 right?

17 A It doesn't distinguish between IPG and
18 SDC programs.

19 Q So by your methodology, it doesn't
20 distinguish between any two sets of programs?

21 A Correct.

22 Q So by your methodology, a program

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1 broadcasts opposite the Super Bowl is credited
2 with the same value under that factor as the
3 Super Bowl itself?

4 A The time of day factor simply is
5 exactly what it says. It doesn't distinguish
6 between the programs at all.

7 Q And the Judge has found that same
8 problem with your time of day analysis in the
9 1999 proceedings, right?

10 A I don't think that I'm going to try to
11 recall the specific proceedings and the specific
12 comments of the Judges with respect to specific
13 proceedings.

14 Q Okay. Well, whether you're aware in
15 the 1999 proceedings or not, you are now familiar
16 with the practice of counter-programming,
17 correct?

18 A Yes.

19 Q So television stations will sometimes
20 avoid putting their own most popular programs in
21 time slots opposite the most popular programs of
22 their competitors, right?

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1 A There's -- yes, there's two
2 strategies. There may be more, but there are two
3 that I'm aware of. Sometimes, you want to put a
4 highly-rated program because you want to compete
5 and sometimes you want to put a low-rated program
6 because you don't want to compete. So that's a
7 programming strategy decision.

8 There's a reason that it says "may"
9 and a "why" in that sentence. Yes, I recognize
10 that this is not an analysis where I am, where I
11 have specific data about specific programs, so
12 it's an overview idea that, you know, in general,
13 on average, holding everything else equal, you
14 would expect that you may have more value in time
15 periods where there are more viewers watching.

16 Q I think you responded to a question
17 from Judge Feder earlier that you did not take
18 day of week into account.

19 A Correct. The average was across all
20 days of the week.

21 Q Would you expect viewing on weekdays
22 to differ from viewings on weekends?

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1 A I would.

2 Q But you didn't take that into account?

3 A I did not.

4 Q Now, you are aware that many religions
5 recognize a certain day of the week as special or
6 holy?

7 A I'm aware.

8 Q And that, under most Christian
9 denominations, that day is a Sunday, right?

10 A I'll say yes.

11 Q You're aware that you didn't take that
12 into account when allocating value to devotional
13 programs?

14 A I already said I treated the whole,
15 it's an average across the whole week.

16 Q Now, let's take a look again at 260,
17 IPG Exhibit 260. Now, your separate columns
18 under your valuation factors and your scaling
19 factors, I believe you said are different
20 measures of value, right?

21 A They are different indicators of
22 value.

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1 Q And so let's just look for a second at
2 B and C here, column B would suggest that, in
3 2004, devotional, an IPG hour, the average IPG
4 hour was on at a time of day that is 85.45
5 percent as valuable, in your methodology, as an
6 SDC hour, correct?

7 A I'm really confused because I thought
8 you were talking about column C, and then you
9 started talking about column B.

10 Q Right. I'm saying columns B and C.

11 A I thought you said C and D. So, yes,
12 85 percent is the -- this 85 percent relates to
13 SDC being 100 percent.

14 Q And in column C now, in addition to
15 IPG programs being on at 85.45 percent as
16 valuable a time slot, on average, IPG programs
17 are also distantly re-transmitted by CSOs paying
18 56.49 percent of the fees, right?

19 A Correct.

20 Q Those are two separate factors, right?

21 A Yes.

22 Q Every CSO has the same 24 hours of the

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1 day to fill, right?

2 A Yes.

3 Q So according to this methodology, IPG
4 programs are less valuable than SDC programs
5 because they're in less favorable times of day,
6 so to speak, right?

7 A Correct.

8 Q They are also less valuable, according
9 to this methodology, because they are re-
10 transmitted by CSOs that pay less fees, right?

11 A Yes.

12 Q But you didn't multiply these factors
13 together, did you?

14 A I put the factors here, and they're,
15 you know, they can be seen. I think that,
16 conceptually, there's some reasonableness to the
17 idea of multiplying the factors. I think the
18 problem is that the factors are probably
19 correlated with each other, and so that creates a
20 problem with the multiplication. If you can take
21 out the correlation piece, then you can multiply
22 them.

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1 Q Certainly, fees paid by CSOs is
2 correlated with the number of distant
3 subscribers, if you can --

4 A Well, I think it's clear you couldn't
5 use C and B, could you use C or B.

6 Q But I think we already agreed that
7 every CSO has the same number, the same 24 hours
8 to fill, right?

9 A What does that, I don't know what that
10 has to do with anything, but okay.

11 Q Well, CSOs who have -- every program
12 is on at some point during those 24 hours, right?

13 A Yes.

14 Q Every station is broadcast or perhaps
15 not --

16 A In 24 hours in a day I think is what
17 you're saying, yes, I agree with you.

18 Q Exactly. Thank you very much. Okay.
19 So there wouldn't be any reason whatsoever to
20 think that the time a program is on would have
21 any correlation with the fees paid by the CSO
22 since every program is on a station that has 24

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1 Similarly, if you're looking at the
2 fees paid, the fees paid are a function of the
3 number of distant subscribers. So it's really
4 about how many subscribers are probably available
5 to be watching. They're both really getting at
6 how many viewers are you going to get; and the
7 more subscribers you have, the more viewers you
8 might have and the more popular time of day the
9 more viewers you might have. So I think that we
10 can know that there may be a correlation between
11 the number of viewers that come about because we
12 observe using the time of day and the number of
13 viewers that we observe based on the fees paid.

14 So, conceptually, again, multiplying
15 them together is a, makes sense. And the issue
16 that remains is whether or not they're
17 correlated.

18 Q Number of subscribers doesn't vary
19 based on time of day, does it?

20 A I don't think you're understanding
21 what I'm saying, but, no, it doesn't.

22 Q Therefore, number of subscribers is

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1 hours a day?

2 A No, that's not, I think, a correct
3 interpretation. The time of day factor simply
4 speaks, not having viewing data on specific
5 programs and only having viewing data, because I
6 did not have that data when I prepared this, did
7 not have the viewership data, individual
8 viewership data, the time of day says, okay, we
9 understand that there's a distribution, national
10 distribution of viewership over the time of day,
11 let's apply that in a way that says, as I think
12 you put it, nicely saying sort of, you know, more
13 favorable times of the day, on average.

14 But why does that lead to value?
15 Without being too specific about what happens
16 inside the black box of viewership and
17 subscribers, let's just say that viewership is a
18 good measure, then the times of day where there
19 are more viewers, you're more likely to get, you
20 have more value because you're more likely to get
21 more viewers because that's a popular time of
22 day.

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1 not correlated with time of day?

2 A It's the viewers -- all I'm saying is,
3 if you have more subscribers, you have more
4 potential viewership. That's what I'm talking
5 about.

6 JUDGE FEDER: Dr. Robinson, you kind
7 of prefaced this by saying that you didn't have
8 direct measurements of viewership when you
9 performed this analysis. The types of data that
10 were provided to you, did you -- which came
11 first, the chicken or the egg? Did you have an
12 analysis in mind and asked counsel for particular
13 types of data, or did counsel provide you with
14 particular types of data and you constructed an
15 analysis making use of the data that you had
16 available?

17 DR. ROBINSON: I think it's the
18 former, if I remember the order. But I had an
19 analysis in mind. I asked for data. I asked for
20 the specific viewership data. I didn't get it
21 until the MPAA produced that data in, I think it
22 was August.

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1 JUDGE FEDER: But if you had your
2 druthers, you would have used viewership data,
3 particular program viewership. It's just that
4 was not available to you, so you used what you
5 did have?

6 DR. ROBINSON: Right. And I probably
7 would have used both, again, sort of coming at it
8 from every direction. But yes.

9 JUDGE FEDER: Okay. So do you know
10 what or who determined what data was available to
11 be provided to you?

12 DR. ROBINSON: Well, it was my
13 understanding that the data existed because Dr.
14 Gray had used it. But for whatever reason, it
15 was not produced or available to me.

16 JUDGE FEDER: How did you decide what
17 Dr. Gray used? You were provided with certain
18 types of, you know, the Nielsen day part analysis
19 and so on. Who obtained that, who chose that
20 particular data set to provide to you?

21 DR. ROBINSON: When I asked for the
22 data, I asked for the data that I wanted. Some

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1 said you had done that combined methodology
2 that's not been allowed in this proceeding?

3 DR. ROBINSON: I would have done this,
4 and I also --

5 JUDGE STRICKLER: I'm sorry. Which is
6 "this?"

7 DR. ROBINSON: I'm sorry. I would
8 have done what I did do, and I also would have
9 done what I did in the combined methodology. I
10 would have done both.

11 JUDGE STRICKLER: Thank you.

12 BY MR. MACLEAN:

13 Q You had MPAA's -- for at least the
14 years 2000 through 2003, you had MPAA's distant
15 HHVH data by quarter-hour and station, right?

16 A In August I received that data.

17 Q Well, you had some kind of HHVH data
18 from MPAA that you used to calculate your time of
19 day analysis, didn't you?

20 A Tribune data on broadcast hours, not
21 viewership data.

22 Q Well, you had your Tribune data,

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1 of the data, as I said, I got and some I didn't.
2 So for example, it's my understanding that the
3 data that I asked for that I didn't get was too
4 expensive or otherwise unavailable to obtain.

5 JUDGE FEDER: Thank you.

6 JUDGE STRICKLER: If you had the data
7 that Dr. Gray had available, following up on
8 Judge Feder's questions, if you had that data
9 available to you and the data that you did get
10 from IPG, would you have still engaged in the
11 same analysis or would you have engaged in a
12 different analysis, now that you know what the
13 MPAA and Dr. Gray had available?

14 DR. ROBINSON: Well, now that I have
15 the data, I did do an analysis with it.

16 JUDGE STRICKLER: That's not my
17 question. I understand you did do it, and that's
18 what we disallowed, that combined methodology.
19 But my question is if, ab initio, you had that
20 information data that Dr. Gray had and also the
21 data that you do have in this case from IPG,
22 which methodology would you have used, or you

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1 right?

2 A Yes.

3 Q For a number of different stations
4 that, to some degree, matched Dr. Gray's stations
5 for that matter, right? Is that right?

6 A Yes.

7 Q Yes. You also had viewership data
8 that you used to add it up, summed it up and used
9 for calculation of your time of day analysis,
10 right?

11 A Yes. I guess the data -- what I
12 didn't have was the full print option and backup
13 that allowed me to understand what the data
14 represented and use it in a more complete way.

15 Q You do know how to conduct a merger
16 between Tribune data and quarter-hour Nielsen
17 data?

18 A It is not a simple process.

19 Q I'm not asking if you had the ability
20 to replicate MPAA's. You had the ability to do
21 it yourself, right?

22 A There are thousands of lines of code

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1 that go into performing that, and it also
2 requires having an appropriate list of titles and
3 other issues. And it really was not a feasible
4 thing to do without the full backup and
5 production.

6 Q I'm almost done here, actually. We
7 talked a little or you talked earlier a little
8 bit about your data covering 90 percent or so,
9 some high percentage of the population, I believe
10 you said.

11 A I think they were revised numbers. It
12 was 69 percent to 80 percent of the fees.

13 Q That's in cable, right?

14 A I can go back and check. If you'd
15 like to assert that --

16 Q Well, it's a big difference, right?
17 Because in cable, you had a stratified random
18 sample.

19 A Yes, that's right.

20 Q And in satellite, you did not have a
21 random sample; is that right?

22 A Right. So in cable, it was 69 to 80

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1 percent of the fees, and in satellite it was 98
2 to 99 percent, I believe. I can look up the
3 chart if you'd like.

4 Q I'm not so worried about the exact
5 percentages as I am about the percent of what
6 here because there are hundreds of distantly re-
7 transmitted stations, right?

8 A Yes.

9 Q You only had maybe 100 to 150 or so
10 for each year; is that right?

11 A Right.

12 Q So there are hundreds of stations for
13 each year that you didn't have.

14 A Correct.

15 Q In both cable and satellite.

16 A Correct.

17 Q So when you call it a census, you
18 really mean enough to cover a certain percentage
19 of either fees or number of distant subscribers,
20 right?

21 MR. BOYDSTON: Objection. I think it
22 misstates the testimony because I think the word

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1 "census" was only used in satellite and not
2 cable.

3 MR. MACLEAN: Let me rephrase. I'll
4 withdraw that question.

5 BY MR. MACLEAN:

6 Q So let's just talk about satellite.
7 When you talk about a census, you're talking
8 about a census in terms of numbers of, either
9 amount of fees or amount of subscribers, not in
10 distantly re-transmitted stations.

11 A Amount of fees, yes.

12 Q But your sample was of distantly re-
13 transmitted stations, right?

14 A The observations in the data are at
15 the stations level.

16 Q Now, let's go to the cable sample,
17 okay? You used a stratified random sample?

18 A Yes.

19 Q Weighted heavily in favor of strata
20 based upon fees paid; is that right?

21 A I think the process is quite clearly
22 laid out in the document, and so, yes, there are

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1 more -- it's a well-conducted standard method for
2 stratifying the sample, and in such sample there
3 are -- I forget how you put it. The larger
4 stations. There's a higher percentage of the
5 larger stations than there is of the smaller
6 stations, if that's what you're asking.

7 Q And when you say larger stations, you
8 mean the stations that are attributed more fee
9 generation?

10 A That's what I mean.

11 Q In fact, in your top strata, you have
12 100 percent.

13 A Which is exactly as it should be.

14 Q In lower strata, you have lower
15 percentages.

16 A Yes.

17 Q When you get towards the bottom
18 strata, you're just talking maybe about five
19 percent or so.

20 A I don't recall the numbers, but I
21 don't think I'd disagree with the process.

22 Q You do not apply a sampling weight by

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1 strata, do you?

2 A I do not.

3 Q Why not?

4 A Dr. Gray does not either.

5 Q Are you sure about that?

6 A Yes, I am. We both weight by the
7 number of minutes in the broadcast but not by a
8 sampling weight.

9 Q Okay.

10 A So there's a level of complexity in
11 the process of selecting and working with the
12 stratified random sample, and I outlined quite
13 clearly in my report how and why I did it the way
14 I did. I do think there is an argument that can
15 be made for using sampling weights and --

16 Q I'm really looking for the argument
17 that can be made against using a sampling weight
18 when you have a weighted stratified sample.

19 MR. BOYDSTON: Objection, your Honor,
20 argumentative. Good for the brief.

21 JUDGE BARNETT: Sustained.

22 BY MR. MACLEAN:

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1 other issues about the sampling process than
2 consideration of the sampling weight. Also
3 recognizing that Dr. Gray did not use a sampling
4 weight, I just didn't do it. If I were to do it
5 over again, I would probably incorporate a
6 sampling weight.

7 BY MR. MACLEAN:

8 Q Now, as we said, your weighted
9 stratification was based on fees generated,
10 correct? Let me just, let me put it this way.
11 Having, through your weighted stratifications,
12 selected your sample, fees generated is also one
13 of your valuation factors, right?

14 A Yes.

15 Q So you were multiplying a weighted
16 sample by fees generated as a valuation factor?

17 A I would agree that that, out of the
18 three factors, that would make that factor less
19 compelling than the other two.

20 Q Well, and of the other two factors,
21 one is distant subscribers, which is closely
22 correlated with fees generated?

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1 Q Why didn't you use a sampling, why
2 didn't you use a sampling weight by strata?

3 MR. BOYDSTON: Objection. It was
4 asked and answered. She explained and said I
5 didn't think it was necessary.

6 MR. MACLEAN: I don't think she did
7 explain that, your Honor.

8 JUDGE BARNETT: Would you make another
9 attempt, Dr. Robinson?

10 DR. ROBINSON: One of the things that
11 creates an issue when you're looking at a
12 stratified sample is, looking at each strata,
13 what the number of, you know, potential draws
14 from that strata that you can have. So we have
15 many more small stations than we have large
16 stations, so we were looking at a strata of large
17 stations. You don't have as many to choose from.

18 So, in fact, kind of conceptually, you
19 actually want to pick more than 100 percent of
20 the large stations, but we can't do that because
21 we only had the ones that we have. So in any
22 case, I would say that I was focused more on

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1 A You're asking if it's closely
2 correlated?

3 Q Yes.

4 A Yes, it's -- I'm not going to use it
5 as a technical term, but there's a relationship
6 between distant subscribers and fees because fees
7 are based on distant subscribers.

8 Q So by the same argument, number of
9 distant subscribers would also be a less
10 compelling factor, having failed to comply
11 sampling weights by strata?

12 A Well, let me say also that the issue
13 with the sampling weights is only reflecting that
14 portion of the data that we don't have and how
15 representative the results that we have are with
16 respect to that portion. So it's still a good
17 measure for the portion that we do have. That's
18 number one.

19 And then number two -- I think I lost
20 my train of thought. Can you say the last part
21 of your question again?

22 Q I think my only question is wouldn't

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1 the lack of a sampling weight -- you already
2 conceded the lack of a sampling weight by strata
3 would reduce the reliability of your fees
4 generated factor, right? Because you're applying
5 fees generated factor to a stratified random
6 sample, weighted stratified random sample but
7 weights based on fees generated.

8 A Right. So I remember the question
9 now. So, you know, the distant subscribers
10 metric is not identical to the fees paid metric.
11 So I would say that it is a, you know, it is a
12 more compelling metric out of the ones presented
13 in this table than the fees paid by that standard
14 and probably less so than the time of day.

15 MR. BOYDSTON: Your Honor, just a
16 brief break, I can tell you that my cross, my
17 redirect rather is going to be very short, for
18 what it's worth.

19 MR. MACLEAN: Your Honor, I might be
20 just about done, but maybe not would be a good
21 time for our lunch break. Oh, it is. We are
22 going to take our lunch break. We will be at

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1 recess until 1:00.

2 (Whereupon, the above-entitled matter
3 went off the record at 11:59 a.m. and resumed at
4 1:13 p.m.)
5 WHEREUPON,

6 LAURA ROBINSON
7 was called for examination by Counsel for the
8 Independent Producers Group, having been first
9 duly sworn, assumed the witness stand, was
10 examined and testified as follows:

11 JUDGE BARNETT: Please be seated. Mr.
12 MacLean?

13 MR. MACLEAN: Nothing further for this
14 witness, Your Honor.

15 JUDGE BARNETT: Okay, thank you. Mr.
16 Boydston?

17 MR. BOYDSTON: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 MR. BOYDSTON: Dr. Robinson, you asked
20 about performing a confidence, calculating
21 confidence intervals, do you recall that?

22 THE WITNESS: Yes.

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1 BY MR. BOYDSTON:

2 Q And did you believe that a confidence
3 interval, reporting that operation was relevant
4 or applicable to your methodology or your
5 calculations?

6 A I mean we always like to calculate
7 confidence intervals when we can, or when it
8 makes sense, but it was not applicable in this
9 case.

10 Q In other words it's not an operation
11 that you could do for the type of calculation you
12 were doing, correct?

13 A Correct.

14 Q And along sort of the same lines, did
15 Dr. Gray conduct a robustness check, or a
16 robustness calculation to your understanding of
17 his calculations?

18 A Yes, I believe he did.

19 Q And do you recall about, did you have
20 any opinion about whether or not it was done
21 correctly or if it was effective?

22 A It was essentially impossible to know

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1 because what was produced, as I understand, and
2 what I saw was only two pages and it was not,
3 there was no backup, there was no code showing
4 how he ran those numbers or how he generated
5 them, so it's hard for me to know what he did
6 with those.

7 With respect to his confidence
8 interval though, I do note that one of his
9 estimates, I believe it was in 2006, is outside
10 of his confidence interval.

11 Q Now you've been critical of Dr. Erdem
12 for his use of relatively limited ratings data,
13 fair to summarize that?

14 A Yes.

15 Q And yet Mr. MacLean essentially was
16 suggesting to you that you too were using limited
17 Nielsen data for certain purposes and raising
18 that as an issue, do you recall that?

19 A Yes.

20 MR. MACLEAN: Objection,
21 mischaracterizes the testimony.

22 JUDGE BARNETT: Overruled.

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1 MR. BOYDSTON: Now my understanding
2 though is that your use of that data was simply
3 to come up with daypart viewing numbers, correct?

4 THE WITNESS: So in the Column B as it
5 were, my time-of-day metric, that's national
6 viewing data averaged from I think it's 2000 to
7 2009 of Nielsen. It's not the 2000 to 2003 MPAA
8 data.

9 MR. BOYDSTON: Okay. But that was
10 simply to establish the numbers for those 96
11 quarter-hours per day, correct?

12 THE WITNESS: Correct.

13 MR. BOYDSTON: Unlike Mr. Egan you
14 weren't trying to extrapolate it over ten years
15 or something like that for -- Or, excuse me, you
16 were trying to estimate a 24/7 figure for 365
17 days a year for each station, correct?

18 THE WITNESS: No, it's a completely
19 different exercise. I wasn't trying to use an
20 estimation period here and estimate something
21 over there, I was just looking at an average over
22 the years to use for the same years.

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1 JUDGE STRICKLER: You meant Dr. Erdem?
2 You meant Dr. Erdem when you said Mr. Egan,
3 right?

4 MR. BOYDSTON: I did, thank you. I
5 did mean Dr. Erdem, thank you, Your Honor.

6 JUDGE FEDER: Excuse me. I'm getting
7 a little confused here. What did you use the
8 2000 to 2003 distant viewing data for?

9 THE WITNESS: Well the main thing that
10 I used it for was to replicate and analyze Dr.
11 Gray's analysis and the implications of various
12 assumptions and things like that.

13 In terms of the numbers showing up
14 here on Table 8, that Column B is coming from a
15 2000 to 2009 Nielsen viewership. I can find the
16 footnote if you want that identifies --

17 JUDGE FEDER: But apart from your
18 analysis and critique of Dr. Gray's report, did
19 he use those 2000 to 2003 distant viewing,
20 Nielsen distant viewing data numbers for any
21 purpose in your analysis of relative market
22 value?

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1 THE WITNESS: I do recall, I mean they
2 are, I've made so many charts with those data
3 that it's a little hard to identify specifically,
4 but it's not, so I did computations, I did
5 analysis studies and charts, I thought about it,
6 but it's not going into the numbers presented
7 here on this page in the summary.

8 JUDGE FEDER: Those are from, like
9 from the daypart analysis that you got from
10 Nielsen that covers some period of what?

11 THE WITNESS: 2000 to 2009, I believe,
12 yes, an average.

13 JUDGE FEDER: Okay.

14 MR. BOYDSTON: Nothing further.

15 MR. MACLEAN: Your Honor, could I
16 recross on that last question?

17 JUDGE BARNETT: You may.

18 MR. MACLEAN: May I do it from here,
19 Your Honor?

20 JUDGE BARNETT: Yes.

21 RECROSS EXAMINATION

22 MR. MACLEAN: Dr. Robinson, could you

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1 please turn to your amended direct statement,
2 cable, in the supplemental portion of your
3 report?

4 JUDGE FEDER: Do you have a paragraph
5 number?

6 MR. MACLEAN: Yes, Your Honor,
7 Paragraph 18, which is on Page 14 of the
8 supplement.

9 MR. BOYDSTON: Did you say cable?

10 MR. MACLEAN: I said cable.

11 MR. BOYDSTON: Thank you.

12 THE WITNESS: Sorry, can you tell me
13 the paragraph again?

14 MR. MACLEAN: Paragraph 18, this is in
15 the supplement not in the original report,
16 Paragraph 18 which is on Page 14.

17 JUDGE FEDER: And this has Table 6-C
18 at the top of the page?

19 MR. MACLEAN: Correct, Your Honor.

20 JUDGE FEDER: Thank you.

21 THE WITNESS: And Table 6-C is that
22 what I should be looking at?

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1 MR. MACLEAN: No.
 2 BY MR. MACLEAN:
 3 Q Below Table 6-C is Paragraph 18, do
 4 you see that?
 5 A Oh, yes, okay. This was the right
 6 page, okay.
 7 Q The third sentence in that paragraph
 8 says "Viewership by time of day is based on
 9 information from the Nielsen media research on
 10 daily television viewing by distant viewers in
 11 2000 through 2004 for selected stations by time
 12 of day in quarter-hour increments," do you see
 13 that sentence?
 14 A I do.
 15 Q And there's a Footnote 9, do you see
 16 Footnote 9?
 17 A Yes.
 18 Q And do you see it say "I understand
 19 that this information was produced to IPG in the
 20 2000 to 2003 Cable Royalty Distribution
 21 Proceedings Phase II."
 22 In the 2000 to 2003 Cable Distribution

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1 Proceedings did MPAA produce Nielsen data for
 2 2004 and beyond, 2004 to 2009?
 3 A Let me find something here.
 4 Supplemental Report. If you want me to be able
 5 to identify the use of the 2000 to 2003 Nielsen
 6 data versus the 2000 to 2009 Nielsen data I'm
 7 probably going to need about five or ten more
 8 minutes to review.
 9 Q This footnote isn't sufficient to
 10 answer that question?
 11 A No, because that means it was used in
 12 that chart, but I don't think, but I know that I
 13 used the 2000 to 2009 data and I'm pretty certain
 14 that what goes into the computations that lead to
 15 my relative market value shares is the 2000 to
 16 2009 data.
 17 Q Okay. And if you take a look at the
 18 last sentence of Footnote 9, "This Nielsen data
 19 includes data for six sweep cycles from 2000 to
 20 2003 plus the first two sweep cycles of 2004," do
 21 you see that?
 22 A I do.

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1 Q Is it not your testimony that this an
 2 error?
 3 A No, I don't -- I'm sorry, I don't
 4 understand what you are saying.
 5 Q Well because Dr. Gray only used sweep
 6 data for his distant HHVH data, isn't that right?
 7 A He used some of the 2004 data, too,
 8 here. I'm not sure what you are asking me.
 9 Q Well this is your description here of
 10 the data that you used, correct?
 11 A Okay. All right, let me read it
 12 again.
 13 Q So are you referring to sweep data
 14 used by Dr. Gray?
 15 A This says "This Nielsen data includes
 16 data for the six sweep cycles from 2000 to 2003
 17 plus the first two sweep cycles of 2004." So
 18 this computation that Footnote 9 is referring to
 19 is relating to the 2000 to 2003 plus a little bit
 20 of 2004 data that Dr. Gray used and produced.
 21 Q Dr. Gray's distant HHVH data, correct?
 22 A Yes.

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1 Q Yes. And that's what you used to
 2 calculate viewership by time of day as it says in
 3 that sentence in Paragraph 18? Let me ask you
 4 this, Dr. Robinson, who wrote Paragraph 18 of
 5 this report?
 6 A I wrote Paragraph 18 of this report.
 7 Q And who wrote Footnote 9?
 8 A I wrote Footnote 9.
 9 MR. MACLEAN: No further questions,
 10 Your Honor.
 11 MR. BOYDSTON: Nothing further.
 12 MR. OLANIRAN: Nothing further, Your
 13 Honor.
 14 JUDGE BARNETT: Thank you, Dr.
 15 Robinson.
 16 MR. BOYDSTON: I guess that brings our
 17 case to its close. During the break I consulted
 18 with Ms. Whittle and with counsel and with regard
 19 to the direct statements and amended direct
 20 statements of Mr. Galaz and Dr. Robinson there
 21 were two for each, because that was before we
 22 formally combined cable and satellite, so we came

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1 up with enumeration for the exhibits that takes
2 that into consideration.

3 I'd like to kind of just briefly read
4 into the record, I've gone over it with a fine-
5 tooth comb with Ms. Whittle and with counsel, but
6 I'd like to do it and then make sure that on the
7 record everything is deemed admitted.

8 JUDGE BARNETT: Thank you.

9 MR. BOYDSTON: May I begin?

10 JUDGE BARNETT: You may.

11 MR. BOYDSTON: Exhibit 249 is the
12 Galaz direct statement regarding cable. What's
13 now a new designation, 249A, is the Galaz direct
14 statement regarding satellite.

15 Exhibit 250 is the Galaz amended
16 direct statement for cable. Exhibit 250A is the
17 Galaz amended direct statement for satellite.

18 With regard to Dr. Robinson, Exhibit
19 287 is the Robinson direct statement for cable.
20 Exhibit 287A is the Robinson direct statement for
21 satellite.

22 Exhibit 288 is the Robinson amended

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1 also a slight renumbering of the Robinson
2 exhibits.

3 JUDGE BARNETT: They are admitted so
4 long as everybody knows what we're talking about.

5 (Whereupon, the above-referred to
6 documents was received into evidence as IPG
7 Exhibit Nos. 249, 249A, 250, 250A, 287, 287A,
8 288, 288A, 251, 252, 289, and 290.)

9 JUDGE BARNETT: You confirmed that
10 with counsel, correct?

11 MR. BOYDSTON: Yes.

12 JUDGE BARNETT: Okay.

13 MR. BOYDSTON: We went over it
14 carefully. I think everyone knows what we're
15 talking about.

16 MS. PLOVNIK: Yes, Your Honor.

17 MR. MACLEAN: And, Your Honor, if I
18 may, admitted subject to objections as always.

19 JUDGE BARNETT: Absolutely, yes.

20 MS. PLOVNIK: Thank you, Your Honor.

21 MR. BOYDSTON: So they're being
22 admitted subject to that, yes?

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1 direct statement for cable and Exhibit 288A is
2 the Robinson amended direct statement for
3 satellite.

4 And I move that those as well as
5 Exhibits 251 for Galaz rebuttal to the SDC and
6 Exhibit 252, the Galaz rebuttal regarding MPAA,
7 and 289, the Robinson rebuttal regarding the
8 MPAA, and 290, the Robinson rebuttal regarding
9 the SDC be admitted subject to the written
10 objections.

11 MR. MACLEAN: Subject to written
12 objections and the rulings that you've already
13 made.

14 MS. PLOVNIK: Yes, subject to written
15 objections, Your Honor.

16 JUDGE BARNETT: Thank you. I'm not
17 going to repeat all those numbers, the Court
18 Reporter I presume got them all and the clerk.

19 MS. WHITTLE: It's still unclear on my
20 records whether 249A and 250A are admitted?

21 MR. BOYDSTON: Right, because we only
22 designated them now as well as the, there was

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1 JUDGE BARNETT: Yes.

2 MR. BOYDSTON: Thank you.

3 MR. MACLEAN: Your Honor, my friends
4 at MPAA have very graciously agreed to allow us
5 to present our rebuttal witness first.

6 JUDGE BARNETT: Okay.

7 MR. MACLEAN: He will be less than ten
8 minutes, you may hold me to that, and along those
9 lines I take back everything I've said about MPAA
10 --

11 MR. OLANIRAN: We appreciate the
12 promotion.

13 JUDGE BARNETT: I noticed you upgraded
14 them kind of step-by-step.

15 MR. OLANIRAN: Yes.

16 MR. MACLEAN: And so the SDC calls Dr.
17 Erkan Erdem. Your Honor, while Dr. Erdem is
18 coming in I would ask the Judges to take judicial
19 notice, and this is in response to a question by
20 Judge Strickler, that the Judges' decision,
21 initial determination of distribution to the 1999
22 Cable Royalty Funds Phase II was issued on

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1 December 10, 2014.

2 JUDGE BARNETT: Thank you. Welcome

3 back, Dr. Erdem. You remain under oath.

4 WHEREUPON,

5 ERKAN ERDEM

6 was called for examination by Counsel for the

7 Settling Devotional Claimants, having been first

8 duly sworn, assumed the witness stand, was

9 examined and testified as follows:

10 THE WITNESS: Good afternoon, thank

11 you, again.

12 REBUTTAL

13 DIRECT EXAMINATION

14 MR. MACLEAN: Good afternoon, Dr.

15 Erdem.

16 THE WITNESS: Good afternoon.

17 BY MR. MACLEAN:

18 Q I just wanted to run a couple of quick

19 questions by you, quick points. First of all,

20 with regard to the television station WDLI there

21 was testimony yesterday from CBC indicating that

22 WDLI was the religious station that was ascribed

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1 or assigned subscribers that should've been

2 assigned to another station.

3 Last night did you investigate as to

4 whether the removal of WDLI would have any effect

5 on the allocation determinations of your

6 methodology?

7 A I did.

8 Q And what were the results of that

9 investigation?

10 A It had no effect on my methodology.

11 Q Why is that?

12 A Because there was no claimed and rated

13 --

14 MR. BOYDSTON: Your Honor, objection.

15 This is not a rebuttal to our rebuttal, or excuse

16 me, this is a rebuttal to our rebuttal, this is

17 not a rebuttal to our case-in-chief.

18 This is his opportunity to rebut our

19 case-in-chief and what they're doing now is

20 they're rebutting our rebuttal, which is, you

21 don't get a rebuttal to a rebuttal.

22 JUDGE BARNETT: I believe our order

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1 said, or your stipulation said that testimony

2 would be limited to material outside the written

3 statements responsive to written statements or

4 oral testimony, and this is responsive to oral

5 testimony. Overruled.

6 MR. BOYDSTON: For the record I don't

7 think it's responsive to oral testimony.

8 MR. MACLEAN: I'm sorry, Dr. Erdem,

9 you just said removal of WDLI had no effect on

10 your methodology. Could you explain why?

11 THE WITNESS: Sure. Because there is

12 no rated and claimed devotional programming on

13 WDLI in the Nielsen reports.

14 MR. MACLEAN: In the entire time

15 period in question?

16 THE WITNESS: That's correct.

17 MR. MACLEAN: Did you triple check

18 that?

19 THE WITNESS: I checked it four times

20 after you told me to check three times.

21 MALE PARTICIPANT: What about five

22 times?

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1 THE WITNESS: Later today.

2 MR. MACLEAN: If Mr. Galaz testified

3 that there are twice as many SDC programs in the

4 time period in question than IPG programs would

5 that be accurate?

6 THE WITNESS: Could you repeat the

7 question?

8 MR. MACLEAN: If Mr. Galaz testified

9 that there were twice as many SDC programs as IPG

10 programs on WDLI in the time period in question

11 would that be accurate?

12 THE WITNESS: I don't see any SDC or

13 IPG claim program on the Nielsen reports.

14 MR. MACLEAN: The second issue I want

15 to raise with you is yesterday during Dr.

16 Robinson's testimony there was some question

17 relating to your calculation of a correlation

18 coefficient and a regression coefficient.

19 First of all can you explain the

20 difference between a correlation coefficient and

21 a regression coefficient?

22 MR. BOYDSTON: Your Honor, I'm going

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1 to object again. My understanding was that we
2 don't get to continuously rebut rebuttals.
3 I understood what your ruling was
4 before, but I make a new objection for the record
5 because I think this is taking this beyond the
6 scope of the stipulation.

7 JUDGE BARNETT: Mr. MacLean, where was
8 this topic in any of the evidence that IPG
9 offered in the last day or two?

10 MR. MACLEAN: To my knowledge it is
11 only in Dr. Robinson's oral testimony yesterday.

12 MR. BOYDSTON: That would be her
13 rebuttal testimony.

14 JUDGE BARNETT: Overruled, go ahead.

15 MR. MACLEAN: Can you very briefly
16 explain the difference between a correlation
17 coefficient and a regression coefficient?

18 THE WITNESS: Sure. Correlation
19 coefficient tells us about the relationship
20 between two variables.

21 It's a value between minus one and
22 one, doesn't have a scale, and positive values

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1 Q What did you use that correlation
2 coefficient for?

3 A I used the -- What did I use it for?

4 Q Yes.

5 A To establish that there was a
6 relationship between local ratings and distant
7 viewing behavior.

8 Q Did you care precisely what that
9 correlation coefficient was?

10 A No, I didn't.

11 Q You just wanted to see that it was
12 high, positive, and significant?

13 A Exactly.

14 Q In the course of calculating a
15 correlation coefficient did you also calculate a
16 regression coefficient?

17 A I did.

18 Q Did you use that regression
19 coefficient?

20 A No, I didn't.

21 Q Did you use it for any purpose
22 whatsoever other than to draw the graph of

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1 mean there is a positive correlation between two
2 variables and a negative value means there's a
3 negative correlation between those two things.

4 Regression coefficient -- Go ahead.

5 BY MR. MACLEAN:

6 Q I'm sorry, go ahead. You were about
7 to explain what a regression coefficient is.

8 A Regression coefficient tells us the
9 linear relationship between these two variables.
10 It is affected by the scale of the two variables
11 of interest here, which is different from the
12 correlation coefficient.

13 And if you have a regression
14 coefficient you can write one variable as a
15 function of the other using that coefficient.

16 Q With respect to 1999 ratings data and
17 distant viewing data that you had did you
18 calculate a correlation code?

19 A I did.

20 Q Did you use that correlation
21 coefficient in applying your methodology?

22 A No, I didn't.

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1 Exhibit 5 in your amended testimony?

2 A No, I didn't, just like I didn't use
3 the correlation coefficient.

4 Q Why didn't you use the regression
5 coefficient?

6 A It's irrelevant in my model.

7 Q Why is it irrelevant?

8 A I don't try to predict distant viewing
9 based on local data in my methodology. I
10 directly used local readings.

11 So what I see in terms of magnitude
12 for the correlation coefficient or the regression
13 coefficient are irrelevant.

14 Q If you had used a regression
15 coefficient, now this regression coefficient you
16 calculated was a linear singular regression is
17 that right?

18 A That's correct.

19 Q If you had used the regression
20 coefficient that you calculated to predict
21 distant viewing based on your model wouldn't it
22 have changed the results?

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1 A No.

2 Q Why not?

3 A I am assuming you mean using a

4 regression coefficient from '99 and predicting

5 for the other years similar to what Dr. Gray does

6 and in that case that would not make a

7 difference.

8 Q Why not?

9 A Because let's say distant viewing

10 equals their coefficient times and a local

11 reading.

12 If I use that coefficient to predict

13 the distant viewing for other years for every SDC

14 and IPG show I would be scaling up or down every

15 number I have as local rating for every show by

16 the same amount.

17 And when I used that eventual to

18 calculate a role of the shared, those

19 coefficients will cancel out. I will end up with

20 the same percentages.

21 MR. MACLEAN: Thank you, no further

22 questions.

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1 CROSS EXAMINATION

2 MR. BOYDSTON: Dr. Erdem, with regard

3 to Station WDLI, when you looked at WDLI did you

4 not notice that it's part of the Trinity

5 Broadcasting Network?

6 THE WITNESS: I didn't notice that.

7 MR. BOYDSTON: What did you look into

8 in terms of WDLI, how did you investigate what

9 programs it had?

10 THE WITNESS: In the Nielsen reports

11 I can see every graded show by station name and

12 WDLI doesn't appear on any of the SDC or IPG

13 claim shows.

14 MR. BOYDSTON: Did you look up WDLI

15 just on the internet or something like that to

16 see whether or not it said, popped up with

17 Trinity Broadcasting with a bunch of religious

18 shows?

19 THE WITNESS: No. No, no, I didn't.

20 MR. BOYDSTON: Never mind, or not

21 never mind. Thank you, I have nothing further.

22 MR. MACLEAN: No questions.

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1 JUDGE BARNETT: Okay, thank you.

2 Thank you, Dr. Erdem.

3 THE WITNESS: Oh, thank you.

4 JUDGE BARNETT: Any further rebuttal?

5 MR. MACLEAN: No, Your Honor.

6 JUDGE BARNETT: Mr. Olaniran?

7 MR. OLANIRAN: Thank you, Your Honor,

8 MPA calls Dr. Gray.

9 WHEREUPON,

10 JEFFREY GRAY

11 was called for examination by Counsel for MPA,

12 having been first duly sworn, assumed the witness

13 stand, was examined and testified as follows:

14 JUDGE BARNETT: Good afternoon, Dr.

15 Gray, you remain under oath.

16 THE WITNESS: Good afternoon.

17 MR. OLANIRAN: May I proceed, Your

18 Honor?

19 JUDGE BARNETT: Yes.

20 MR. OLANIRAN: Thank you.

21 DIRECT EXAMINATION

22 MR. OLANIRAN: Good afternoon, Dr.

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1 Gray. Before I get into the substance of your

2 testimony, you testified a couple of days ago and

3 you had an exchange with Judge Strickler about a

4 robustness test, do you recall that exchange?

5 THE WITNESS: Yes. Judge Strickler,

6 echoed by Judge Feder.

7 BY MR. OLANIRAN:

8 Q Okay. And did you get a homework

9 assignment?

10 A Indeed I did.

11 Q And hopefully the dog didn't eat your

12 homework, right?

13 A She did not, no.

14 Q Okay. And what were you asked to do?

15 A Well I'll paraphrase, essentially I

16 was asked to perform a robustness check to see if

17 the regressions that I used over the 2000 to 2003

18 period if there was any trend within '00 to '03

19 that would lead me to be more comfortable to

20 continue to use projections for the entire '00 to

21 '09 period.

22 Q Okay. And did you perform the test?

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1 A Yes, I did.
 2 JUDGE BARNETT: Mark this MPAA 379.
 3 MALE PARTICIPANT: You spoke so softly
 4 I don't know if he heard it.
 5 JUDGE BARNETT: Oh, Mr. Wojack, this
 6 is marked as MPAA 379.
 7 MR. OLANIRAN: Yes, Your Honor.
 8 JUDGE BARNETT: 3-7-9.
 9 (Whereupon, the above-referred to
 10 document was marked as MPAA Exhibit No. 379 for
 11 identification.)
 12 MR. OLANIRAN: Dr. Gray, do you --
 13 (Off the record comments)
 14 MR. OLANIRAN: Dr. Gray, you should
 15 have in front of you a document pre-marked as
 16 MPAA Exhibit 379, do you recognize that document?
 17 THE WITNESS: Yes, I do.
 18 MR. BOYDSTON: Your Honor, I object.
 19 They never provided us with this underlying data
 20 even though this has been apparently several
 21 days, well it was several days ago when the
 22 question came up.

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1 So we object on the grounds that we
 2 didn't get the underlying data for it even though
 3 it must have been available before now.
 4 MR. OLANIRAN: May I --
 5 JUDGE BARNETT: You may.
 6 MR. OLANIRAN: Actually as my next
 7 question, assuming the exhibit came in, was going
 8 to be whether or not IPG could have replicated
 9 this analysis because they do in fact have the
 10 data.
 11 JUDGE BARNETT: Overruled.
 12 MR. OLANIRAN: Thank you. And I had
 13 asked you if you recognized the document and what
 14 is the document, just tell me what the nature of
 15 the document is without getting into the
 16 substance?
 17 THE WITNESS: The document shows some
 18 regression robustness checks I did in response to
 19 the Judge's homework assignment.
 20 MR. OLANIRAN: Okay. And you prepared
 21 this yourself?
 22 THE WITNESS: Yes, I did.

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1 MR. OLANIRAN: Your Honor, I move to
 2 admit MPA Exhibit 379.
 3 JUDGE STRICKLER: Dr. Gray, when did
 4 you prepare this?
 5 THE WITNESS: That was Monday evening,
 6 or maybe it was Tuesday evening. I don't recall
 7 exactly when.
 8 JUDGE STRICKLER: You don't recall if
 9 it was Monday or Tuesday?
 10 THE WITNESS: Correct.
 11 MR. OLANIRAN: But I believe we
 12 provided to opposite counsel I believe on
 13 Wednesday.
 14 JUDGE BARNETT: Oh, not just now?
 15 MR. OLANIRAN: No.
 16 JUDGE BARNETT: Okay, all right.
 17 MR. OLANIRAN: And, Dr. Gray, just to
 18 be clear --
 19 JUDGE BARNETT: Oh, well it's been
 20 offered and I haven't heard from --
 21 MR. MACLEAN: No objections.
 22 MR. BOYDSTON: I'm sorry, I don't

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1 recall getting this until now.
 2 MS. PLOVNICK: No. I emailed it to
 3 you Wednesday.
 4 MR. BOYDSTON: Okay. I didn't recall.
 5 JUDGE BARNETT: 379, is that the
 6 number we're on?
 7 MR. OLANIRAN: Yes.
 8 JUDGE BARNETT: 379 is admitted.
 9 (Whereupon, the above-referred to
 10 document was received into evidence as MPAA
 11 Exhibit No. 379.)
 12 JUDGE BARNETT: Now you may ask
 13 questions.
 14 MR. OLANIRAN: And, Dr. Gray, just to
 15 be clear, would Dr. Robinson have been able to
 16 replicate the content of Exhibit 379?
 17 THE WITNESS: Yes. She has all of the
 18 underlying data to replicate this.
 19 MR. OLANIRAN: And to be more specific
 20 what are the underlying data that you used to --
 21 MR. BOYDSTON: Your Honor, just
 22 another objection for the record. When we got

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1 this Ms. Robinson was already testifying and so
2 we could not speak to her about this, present
3 this to her, or ask her to try to replicate it.

4 And, therefore, we had no opportunity
5 to be able to have our witness even understand
6 what's behind this, and so I object on those
7 grounds.

8 JUDGE BARNETT: Thank you, Mr.
9 Boydston, but the robustness issue arose in the
10 written papers, it didn't just arise here.
11 Wasn't there a robustness test in your written
12 testimony?

13 MR. BOYDSTON: Well but this came,
14 this was in response to a question by Judge
15 Strickler, not something -- It hadn't been done
16 in his papers, Judge Strickler asked if he would
17 perform that.

18 JUDGE BARNETT: Is that correct?

19 THE WITNESS: That is correct, yes.

20 JUDGE BARNETT: Oh, okay.

21 MR. BOYDSTON: Well it is --

22 JUDGE STRICKLER: Also, excuse me,

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1 saying the Judges asked the question.

2 MR. OLANIRAN: Understood.

3 JUDGE BARNETT: It was not part of her
4 testimony, it was not part of Dr. Gray's original
5 testimony, but we opened the box so we would like
6 to give everybody an opportunity to close the
7 box.

8 MR. OLANIRAN: Dr. Gray, could you
9 please explain what's going on with respect to,
10 explain what you have done with respect to MPAA
11 379?

12 THE WITNESS: Yes. I guess I'll just
13 walk you through the table and read for this
14 right to left.

15 For example, on the first panel where
16 I have "Cable," the final column where it says
17 "All," are actually the results that are in
18 written rebuttal testimony, both for cable and
19 satellite.

20 And so what that means is those are
21 results where I used the 2000 to 2003 time period
22 to perform my regression analysis to get the

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1 whether or not Dr. Robinson would've had the time
2 to do this sort of speculative exercise because
3 you don't recall receiving it on Wednesday by
4 email anyway so you never had a chance to answer
5 it.

6 MR. BOYDSTON: Well my client
7 remembers receiving it. A lot went on Wednesday
8 night. I know that we received it based on what
9 my client says and we didn't forward it to --

10 JUDGE BARNETT: Let me cut to the
11 chase. This was a question by one of the panel
12 and so we would like to have the answer. You
13 will have an opportunity to respond in your
14 written materials that we expect to come flowing
15 in after this hearing is over.

16 MR. OLANIRAN: But in all fairness,
17 Your Honor, this particular robustness issue is
18 actually Dr. Robinson's criticism of Dr. Gray and
19 to the extent that she wanted to do a robustness
20 test she had all of the data to do that test.
21 She chose not to.

22 JUDGE BARNETT: That's fine. I'm just

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1 correlation between local ratings and subscribers
2 and distant viewers and then extrapolate it out
3 across the entire time period.

4 Then the next step I did, and as I
5 explain I think you'll see why it should be
6 relatively straightforward and easy for Dr.
7 Robinson to replicate, is I took the same exact
8 program and then just used the 2000 data and ran
9 the same regression, the same sort of structure,
10 and extrapolated out to everybody, and that would
11 be the first column.

12 JUDGE BARNETT: Did it make that
13 sound?

14 THE WITNESS: Yes. I apologize to the
15 Court Reporter. And then, so, again, the first
16 column for 2004, 2000 cable is 99.42, et cetera,
17 and then for the next column I did the same thing
18 but I only used the 2001 data and performed the
19 regression analysis and then did the predictions
20 for the entire period, and so forth for 2002 and
21 2003.

22 I'll talk about satellite next, but

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1 what you'll see is I would describe that as
2 fairly stable across the four periods using each
3 year individually and reasonably similar to using
4 all of the periods polled, if anything to, you
5 know, just an intuitive eye, there might be a
6 slight uptick to MPAA's advantage as you go
7 across the four periods.

8 So if perhaps you put in a trend
9 variable or something to that effect you might
10 lead to slightly higher calculated royalty shares
11 in the remaining periods. That's cable.

12 A similar comment with respect to
13 satellite, the same thing was done. I had to do
14 something a little different with '02 and '03,
15 and I'll talk about that momentarily, but in
16 terms of the final results you'll see, again,
17 quite stable in my opinion calculated royalty
18 shares, and these are I should say MPAA royalty
19 shares.

20 For '02 and '03 in satellite, you
21 know, I ran these separate regressions for WGN
22 and all other stations, due to the paucity of

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1 data for both those two years, and I had a
2 relatively complicated Plauson regression, it
3 needs a decent amount of data to calculate the
4 poignance of it.

5 For both those years the Plauson, to
6 use a technical term, did not converge, so I
7 needed more data so what I did was to pull '02
8 and '03 together to see, again, if it's
9 relatively stable across the four years.

10 In my opinion it is. So this gave me,
11 or reaffirmed my confidence that it's reasonable
12 to use the '00 to '03 data to calculate viewing
13 shares throughout the entire period of this year.

14 And I'm hoping this answers the
15 Judge's question on Monday, and I'm happy to
16 answer subsequent questions and even receive
17 subsequent homework assignments.

18 MR. OLANIRAN: Okay. Now turning to
19 your rebuttal testimony, you prepared a written
20 rebuttal report in this proceeding did you not?

21 THE WITNESS: Yes, I did.

22 BY MR. OLANIRAN:

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1 Q Okay. And I'm happy to let you know
2 that that document has been admitted into
3 evidence as MPA 373, and the orange binder is
4 front of you, you can easily refer to it.

5 Do you have it in front of you?

6 A I do.

7 Q All right. And what do you address in
8 your rebuttal testimony?

9 A Well I was asked to review the
10 testimonies of Raul Galaz and Laura Robinson and
11 evaluate whether or not IPG was proposing a
12 reliable methodology with associated reasonable
13 and reliable royalty shares.

14 Q Would you please give a summary of
15 your opinion with respect to Mr. Galaz's
16 testimony?

17 A I suppose the simple summary is that
18 he does not propose an allocation methodology or
19 royalty shares.

20 Q And would you please summarize your
21 finding with respect to the testimony of Dr.
22 Robinson in the opening and supplemental reports

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1 submitted by Dr. Robinson in this case?

2 A Yes. It's my conclusion that her
3 methodology was flawed conceptually and in its
4 application such that it rendered her reported
5 royalty shares unreliable.

6 Q And why do you say that? Let's start
7 with your criticism as to the conceptual problems
8 with her methodology.

9 A Sure. Perhaps I'll describe the
10 methodology, although I imagine it's been talked
11 about while I've sequestered, so she starts by
12 calculating, or purportedly calculating IPG's
13 volume share and then applies three separate
14 shift factors, as I call them, to obtain three
15 independent royalty share calculations.

16 And each calculation is incomplete and
17 unreliable and more than that actually she starts
18 with a volume share calculation that's biased and
19 inflates IPG's volume share because it relies
20 upon a non-random sample.

21 Q Okay. Now why do you say that the
22 volume share is a problem?

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1 A Well it starts with using this overlap
2 sample, as I call them, and her overlap sample is
3 the overlap of her stratified sample and my
4 stratified sample, and each of ours were designed
5 to be disproportionately, sort of selecting
6 larger, or stations that are re-transmitted to a
7 greater number of distant subscribers.

8 In fact, the largest are slightly with
9 certainty the, you know, medium/large are
10 slightly the high probability and so forth, and
11 so you can think intuitively if you do an overlap
12 of those two samples you're going to get all
13 those very large stations, all these other
14 shorthand stations that are distantly re-
15 transmitted to a lot of subscribers.

16 You'll get all of the extremely large
17 ones, most of the large ones, and very few of the
18 small ones.

19 The reason why it's problematic in
20 this case is if you look at her own calculation
21 with respect to her subscriber count shift factor
22 she finds that IPG programming, in terms of the

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1 distribution, not on absolute levels, the IPG
2 programming tends to be on larger stations.

3 So what that implies is if you are to
4 make this overlap sample more representative,
5 that it's bringing smaller stations, medium-sized
6 stations, et cetera, according to Robinson's own
7 calculations, you will get lower, lower on
8 average IPG volume shares.

9 So it was a result of having this
10 overlap sample she has a volume share calculation
11 that's inflated.

12 Q Okay. Now with respect to her time-
13 of-day calculation you were critical of that
14 also, were you not?

15 A I am critical of each royalty share
16 calculation, yes.

17 Q Okay. Well let's talk about the time-
18 of-day calculation. First describe your
19 understanding of what she did with that and then
20 following that why you think that is problematic?

21 A I don't know how much detail to go
22 into, so she essentially calculates effectively

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1 the sort of the percentage of programming of
2 IPG's takes place in each quarter-hour, it's
3 raise it by the percentage of viewing.

4 Maybe if I sort of describe it you'll
5 see clearly what she did, is she starts with,
6 imagine three columns. This is the way I think,
7 I don't know if the Judges think this way.

8 In the first column, which is like
9 there's 96 rows for each quarter-hour, will be
10 Nielsen's United States aggregate viewing. So in
11 the middle of the night, relatively small
12 numbers, peak time, relatively large numbers,
13 okay. So that's the Nielsen data.

14 Q And that's Nielsen data, that's not
15 the same as the Nielsen data that was used, the
16 Nielsen diary data?

17 A No, no. Again, this is just United
18 States annual viewing calculated by Nielsen, not
19 just, you know, just total U.S. viewing.

20 And the next column calculates for
21 each United States what percentage of IPG's
22 volume takes place, and relative to MPAA, you

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1 know, it tends to take place in the middle of the
2 night.

3 So you have larger percentages like 5,
4 8, 9 percent in the middle of the night, smaller
5 numbers at peak time. The next column, same
6 thing for MPAA, whereas the pattern is reversed
7 though.

8 And then if you multiply, see if you
9 can do this in your head, it would be IPG numbers
10 by the Nielsen numbers all the way down then you
11 get a number.

12 You do the same thing for MPAA and
13 it'll be a larger number because MPAA's
14 percentages are when Nielsen viewing is big. So
15 you have an MPAA number, an IPG number, and she
16 takes a ratio.

17 IPG's number is smaller so I think,
18 cable is about 75 percent and satellite was like
19 80 to 85 percent.

20 Q Okay. Now what is the problem with
21 that calculation?

22 A Well the largest problem is that it's

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1 incomplete, because it's true the time of day
2 isn't economic indicia of value largely because
3 it is correlated in the field.

4 But there are other things that
5 impact, you know, there are other things that
6 impact value. As she says in her testimony the
7 number of distant describers that have access to
8 this sort of program is important.

9 But for this metric she doesn't
10 control for it. Whenever people actually view
11 that specific program is critical and she makes
12 no control for the popularity of the individual
13 program.

14 So it can only go so far, and so my
15 big criticism of that factor, which is probably I
16 think slightly better than the other two, but it
17 still falls short of being a reliable measure.

18 Q And do you discuss in some more detail
19 your criticism of the fees paid factor and the
20 subscriber count factor?

21 A In my written direct testimony I do,
22 yes.

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1 Q Yes. I mean in your written direct or
2 your written rebuttal?

3 A I'm sorry, in my written rebuttal.
4 Thank you.

5 Q Thank you. And your conclusion as to
6 the three factors being used to estimate
7 royalties, royalty allocation is what?

8 A Well, yes, to summarize, what you have
9 are those three factors that are incomplete yet
10 all based upon an inflated and bias volume
11 measure, so, yes, I see no reason to rely upon
12 them.

13 JUDGE STRICKLER: Dr. Gray?

14 THE WITNESS: Yes?

15 JUDGE STRICKLER: We factor there are
16 three different alternative measures in Dr.
17 Robinson's approach. Do the deficiencies that
18 you've testified to with regard to each of the
19 individual of the three methodologies that she
20 has, do they in any sense offset each other?

21 In other words, is the weakness of one
22 a relative strength of the other?

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1 THE WITNESS: No. I see no positive
2 attributes of the weaknesses, and if they don't
3 counter balance at all it gives you independently
4 sort of incomplete and unreliable -- Each is
5 inflated due to the volume share and I don't know
6 how one could use these three metrics to come up
7 with a reasonable royalty rate.

8 JUDGE STRICKLER: So each is unhappy
9 in its own way?

10 THE WITNESS: Each is very unhappy in
11 its own way.

12 JUDGE STRICKLER: Okay.

13 MR. OLANIRAN: And your opinion
14 remains the same even though she recommends a
15 range and then picks a midpoint from that range
16 with respect to IPG's share?

17 THE WITNESS: As I wrote in my written
18 rebuttal testimony, I see no economic reason why
19 the midpoint of two incomplete and unreliable
20 numbers should be reliable or complete. I can't
21 imagine.

22 BY MR. OLANIRAN:

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1 Q Now you also talked about application
2 flaws. You talked about attribution of titles to
3 IPG for years that IPG did not claim for, could
4 you discuss that?

5 A Yes. What it was is we received in
6 Discovery of the other counsel just a list of
7 IPG's claimed titles associated, together with
8 these years that they were claiming them, and for
9 many of these titles Robinson claimed them for
10 the entire period even though IPG itself did not
11 appear to be claiming those titles.

12 Q I know you spoke already about the
13 random and non-random sample, which you also
14 talked about in your written rebuttal, correct?

15 A That's correct.

16 Q Now you talked in a lot more detail in
17 your written rebuttal about both the conceptual
18 flaws and the application flaws in Dr. Robinson's
19 testimony, do you not?

20 A I do.

21 Q Okay. Are you aware that on March 13,
22 2015, the Judges issued an Order with regard to

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1 claims in this proceeding?

2 A Yes, I was provided a copy of the

3 Order.

4 Q Right. And that the Judges directed

5 the parties to update their claims to reflect

6 their determination in that Opinion, right?

7 A You mean to update the analysis?

8 Q Yes.

9 A Yes.

10 Q And did you do so?

11 A Yes, I did.

12 Q With regard to both cable and

13 satellite?

14 A Yes.

15 Q Okay. And where are the results

16 reflected in your written rebuttal testimony?

17 A They would be on page, on the Table on

18 Page 21 and also discussed in the paragraphs on

19 Page 21 and 22.

20 Q Dr. Gray, let's sort of shift gears a

21 little bit now to talk about Dr. Robinson's

22 criticism of your written direct testimony. And

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1 have you had a chance to review Dr. Robinson's

2 written rebuttal testimony?

3 A Yes, I have.

4 Q And where she talks about your

5 methodology?

6 A I have, yes.

7 Q Okay. And you had a chance to

8 identify the issues that she raises of problems

9 with your methodology, correct?

10 A Yes.

11 MR. OLANIRAN: Okay. Now let's talk

12 about the specific topics that she talked about.

13 The first issue Dr. Robinson --

14 MR. BOYDSTON: Your Honor, I'll just

15 issue my objection here. Again, he now is

16 getting a chance to rebut Dr. Robinson's

17 rebuttal.

18 Dr. Robinson doesn't get a chance to

19 rebut what he's saying right here and I don't

20 think that's fair and I object on those grounds.

21 JUDGE BARNETT: It's so noted. Mr.

22 Olaniran, please complete this.

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1 MR. OLANIRAN: Thank you, Your Honor.

2 Dr. Robinson states that your relative value

3 metric is conceptually flawed because it relies

4 entirely on relative distant viewership, how do

5 you respond to that?

6 THE WITNESS: Well I suppose two-fold.

7 One, and I discussed this on Monday, I think a

8 relative viewership is in and of itself, given

9 that this is a Phase II proceeding, a good

10 measure of relative value.

11 I think it does a good job at

12 measuring the marginal contribution of

13 programming, but, secondly, I should say in my

14 amended testimony I also analyze the impact of

15 viewership on a number of subscribers as well as

16 the impact of IPG's programming mix on the number

17 of subscribers.

18 BY MR. OLANIRAN:

19 Q And next Dr. Robinson talks about, she

20 states that the relative estimates is based on

21 limited data and she refers specifically to your

22 use of the 2000 through 2003 sweeps data as a

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1 basis for all the subsequent calculations. Is

2 this criticism justified?

3 A Not in my opinion. And I did, again,

4 talk about this on Monday, but I find the '00 to

5 '03, both cable and satellite, diary data to be

6 very rich and useful with, you know, 1.4 to 1.6

7 million quarter-hour observations of viewing that

8 enables one to project viewing to non-sweeps

9 periods.

10 In fact, just let's you project it to

11 the entire period for it on a quarter-hour basis,

12 24 hours a day, seven days a week, 12 months a

13 year, for each year.

14 Q Now Dr. Robinson also talks

15 extensively about what she described as a high

16 incidence of zero values in the Nielsen data. Do

17 you recall that?

18 A I do.

19 Q And I know you talked, or you already

20 testified as to the nature of zero viewing in

21 general.

22 My question is that is it true that

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1 the zero viewing issue, if you will, somehow
2 disfavors IPG?

3 A I don't see how it disfavors IPG. You
4 know, and when we're talking about zero viewing
5 let's be clear that well it's not actual zero
6 viewing, but it's recorded no viewing in a
7 Nielsen survey data.

8 What's true, and Dr. Robinson points
9 this out in her rebuttal report, IPG has a lot
10 more instances of zero recorded viewing than does
11 MPAA and that's why in my methodology actually I
12 estimate viewing for every single quarter-hour,
13 including those where there is Nielsen data, and
14 that's the right thing to do.

15 I know she suggests to use the sort of
16 "actual," but it's not actual zero viewing, and
17 override it. That's a flawed recommendation. I
18 could go into more detail as to why.

19 Q Did you by any chance, do you have a
20 sense for between the hours of 12 midnight and
21 6:00 a.m., do you have a sense for the percentage
22 of the total IPG attributed titles that are

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1 present in that timeframe versus MPAA's?

2 A I looked at volume, I don't recall
3 looking at titles in terms of --

4 Q I meant volume, I'm sorry.

5 A But, yes, IPG is, about 25 percent of
6 their volume occurs between midnight and 6:00
7 a.m., whereas about 6.6 percent of MPAA's
8 programming takes place between midnight and 6:00
9 a.m.

10 JUDGE STRICKLER: That's 6 percent you
11 said?

12 THE WITNESS: Yes. I believe it was
13 6.6, 6.8 percent. It's less than 7 percent and I
14 have a lot of numbers in my head.

15 JUDGE STRICKLER: Were the zero
16 viewing points concentrated within any particular
17 time period?

18 THE WITNESS: Zero viewing occurs,
19 yes, much more commonly in the middle of the
20 night.

21 JUDGE STRICKLER: And you saw that in
22 the data?

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1 THE WITNESS: I see that in the data
2 and I believe Robinson even has tables confirming
3 that as well. Dr. Robinson.

4 MR. OLANIRAN: Dr. Robinson criticized
5 you for using compensable and non-compensable
6 broadcast data in the satellite, but you used
7 only compensable broadcast data for your cable
8 estimates. Do you have a response to that?

9 THE WITNESS: I used all the data that
10 was provided to me in both of the circumstances.
11 So with respect to cable that was actually
12 filtered by the Reznick Group and they provided
13 just MPAA and IPG compensable programming.

14 So my hands, for lack of a better
15 expression, were sort of tied and I had to do an
16 analysis just within the program supplier
17 category to calculate MPAA and IPG viewing shares
18 and that's what I did.

19 For satellite I was given all the data
20 and so, and there's no reason in my mind or in my
21 training with the way I train my students,
22 trained in my students, to throw out data, so I

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1 calculated viewing for every single program.

2 But then when I calculated relative
3 viewing shares for MPAA and IPG I restricted it
4 just to MPAA compensable and IPG compensable
5 programming.

6 I did though, a long time ago,
7 actually last summer, repeat satellite analysis
8 using just program supplier categories, and so I
9 do the same approach I did within cable, and the
10 resulting viewerships were slightly higher for
11 MPAA, that is to IPG's advantage the way I did it
12 rather than the way Dr. Robinson proposed.

13 BY MR. OLANIRAN:

14 Q Thank you. Dr. Robinson also
15 criticizes your subscriber regression has many
16 flaws, do you recall that?

17 A I do.

18 Q Yes, and what is the nature of her
19 criticism exactly?

20 A She thought that rather than looking
21 at sort of the last year's programming mix of,
22 you know, IPG relative to MPAA, that's impact on

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1 this year's subscribers that you should not look
2 at that and just look at this year's impact on
3 the simultaneous subscriber count.

4 But the entire structure of the
5 regression does the following, it looks at the
6 questions, so was last year's change in viewing,
7 how does that affect this year's subscribers?

8 What we find is, you know, the more
9 viewing there was last year, the more subscribers
10 there are this year.

11 And then the next thing you want to
12 say is well, what about that program mix last
13 year, if there's like more programming that's IPG
14 last year across all these stations is there more
15 subscribers this year, and that might be an
16 indication, emphasis on might, be an indication
17 that IPG had some sort of special niche
18 programming.

19 But I think it's critical to look at
20 the lags for both into this year's, and that's
21 what I do, and with updated titles I find a
22 positive relationship between last year's viewing

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1 your regression analysis is flawed because of
2 your choice of data and choice of variables for
3 including it in your regression analysis.

4 But just going back, you talked about
5 your sample selection a little bit earlier, I
6 just want to be sure you employed a random
7 sample?

8 A Yes.

9 Q Okay. And a stratified random sample?

10 A Correct.

11 Q And did you apply sampling weights by
12 strata?

13 A Yes.

14 JUDGE STRICKLER: When you say
15 "sampling weights" wouldn't you agree sampling
16 weights by strata you mean by stratifying that
17 inherently creates the weights?

18 THE WITNESS: Well you calculate the
19 weights based on the probability of being
20 selected out of that strata, so it's a
21 proportionate stratified sampling.

22 And so like the weights for the, the

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1 and this year's subscribers and a negative, but
2 insignificant, relationship between IPG's
3 programming and the number of subscribers this
4 year.

5 But it's insignificant, it's a huge
6 standard error suggesting that there's a lot of
7 other things going on in subscribers' decision
8 making.

9 Q Just to summarize what you just -- I
10 want to make sure I understand.

11 A Yes.

12 Q You are trying to see whether or not
13 the extent to which IPG's program and MPAA's
14 program are driving subscribership for a
15 voluntary --

16 A Correct.

17 Q And you were able to establish that
18 neither party's program drove the level of
19 subscribership for subsequent years, is that a
20 fair way to describe that?

21 A That's a more succinct way of it, yes.

22 Q Okay. Dr. Robinson also opined that

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1 largest is actually a weight of one, because that
2 one's picked with certainty, and your probability
3 of being selected within each strata is the
4 fraction of the number of stations in that
5 strata, so a proportionate stratification.

6 MR. OLANIRAN: Dr. Robinson also talks
7 about your choice of omission of an indicator
8 variable for the year 2000. Could you explain
9 why you did that and in fact if any that has on
10 your regression analysis?

11 THE WITNESS: Right. So when I ran
12 the regressions, both in cable and satellite for
13 the 2000 to 2003 period, from which I projected,
14 I put in what are called categorical variables,
15 or indicator variables, which are zero one
16 variables for the year, and what that does is
17 just control for, all those equal, just overall
18 levels of distant viewing throughout the period.

19 And then we use these coefficients to
20 project out in time for the '04 to '09 period
21 because it's a Plauson and because there are two
22 separate regressions it does matter which year is

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1 omitted when you make these projections.
 2 Now is Dr. Robinson going to know by
 3 looking at my programs? What I did is I let the
 4 computer sort of select which year to omit. So
 5 there was no intentional bias on my part and my
 6 next step was to check if there was any
 7 unintentional bias.

8 A couple ways of doing that, but the
 9 simplest way is just to remove those year
 10 controls. I suspect that's something that Dr.
 11 Robinson did, so if you just run the regression
 12 again but remove the year controls what you find
 13 is very similar results.

14 In fact, for each cable royalty year
 15 and each satellite royalty year the estimate
 16 removing these year dummy controls is within the
 17 95 percent confidence interval that I report in
 18 my written rebuttal testimony.

19 So the conclusion is with respect to
 20 the omitted year, it's no intentional bias, no
 21 unintentional bias, and inconsequential.

22 Q And overall how would you describe Dr.

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1 Robinson's criticisms of your methodology?

2 A Inconsequential, for lack of a better
 3 word.

4 Q And you now have updated share
 5 allocations for IPG and MPAA, do you not?

6 A Yes, we talked about them ten minutes
 7 ago, or pointed to them in the report.

8 MR. OLANIRAN: Okay. Your Honor, I
 9 have no further questions for Dr. Gray.

10 MR. MACLEAN: Nothing from us, Your
 11 Honor.

12 MR. BOYDSTON: Your Honor, we do.
 13 Some of this is brand new, can we have a few
 14 minutes to, take a break for a few minutes?

15 JUDGE BARNETT: If we take our
 16 afternoon recess at this point there will be no
 17 further break before closing, if there's going to
 18 be a closing.

19 MR. BOYDSTON: I think we can power on
 20 through as we did earlier.

21 JUDGE BARNETT: Okay. We'll be at
 22 recess for 15 minutes.

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1 (Whereupon, the above-entitled matter
 2 went off the record at 2:18 p.m. and resumed at
 3 2:40 p.m.)

4 JUDGE BARNETT: Please be seated. Mr.
 5 Boydston?

6 CROSS-EXAMINATION

7 BY MR. BOYDSTON:

8 Q Thank you, Your Honor. Good
 9 afternoon, Dr. Gray. I'm Brian Boydston,
 10 Attorney for IPG, as you'll recall.

11 A Good afternoon.

12 Q In a number of the questions I'm going
 13 to ask you, I'm really just trying to establish
 14 whether or not some of these things were
 15 mentioned in your rebuttal, and partly just to
 16 make a record as to that fact or non-fact.

17 Before I do that, I'm going to ask you
 18 about the new exhibits on your regression
 19 robustness check, Exhibit 379. And you said this
 20 was created some time after last Monday, when the
 21 issue first arose, correct?

22 A Correct. Actually, I gave it to

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1 counsel on Wednesday.

2 Q Okay, I assume that the underlying
 3 data that you used to produce this is in
 4 existence, is available so to speak?

5 A Dr. Robinson has in fact -- the fact
 6 that she was able to replicate my results means
 7 all -- she just needed to write a single line in
 8 the program to generate these results.

9 Q Okay, well, there's some record of
 10 what you did to create this, right?

11 A Again, all she had to do was repeat
 12 the analysis, restricting it to each of the
 13 single years.

14 Q Okay. Is there something that you can
 15 provide us, which describes that? The problem is
 16 that I am not a statistician or a mathematician.
 17 So, I can't -- I don't know how to tell her how
 18 to do this.

19 A I showed her this, and showed her how
 20 to do it, but I'll tell you what the program code
 21 is.

22 For example, for 2000, she'd go in and

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1 write, "Keep if year" -- K-E-E-P if --

2 JUDGE BARNETT: Could you exchange
3 this information off the record later?

4 MR. BOYDSTON: That's what I was
5 getting at.

6 JUDGE BARNETT: Okay, this doesn't
7 need to be in the record. I don't think.

8 MR. BOYDSTON: I just want to know if
9 we can get it, and if I could ask that you
10 provide that information to counsel and it be
11 forwarded to me. Is that fair enough?

12 MR. OLANIRAN: That's fine with us,
13 Your Honor.

14 JUDGE BARNETT: Thank you. ASAP.

15 MR. OLANIRAN: Will do.

16 BY MR. BOYDSTON:

17 Q Now, you were talking about Dr.
18 Robinson's methodology and recalculation of
19 volume. You said you believe that it was biased
20 because it was non-random. Now, I did not recall
21 seeing any statement to that effect in your
22 written rebuttal statement. Is that fair? Is

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1 of the population of stations carried by CSOs or
2 SSOs."

3 Q Okay, and I see -- it's verbatim. So,
4 I understand now. I got it.

5 A Okay.

6 Q Where does it bias -- where does a
7 bias come into this in IPG's benefit?

8 A Well, I describe how the bias is
9 evidenced in her sample that she reports.

10 Q And I understand that.

11 A Actually, in this rebuttal report, I
12 do not describe that it is inflated in IPG's
13 advantage.

14 Q Okay, so you don't say that it's
15 inflated in IPG's advantage. That's your
16 testimony today?

17 A Like I said, it's biased. It is to
18 IPG's advantage, but either way, it is biased and
19 therefore unreliable.

20 Q I'm sorry. I'm not sure I caught it
21 all.

22 A I apologize. I'll speak slower. I

190

1 that true, I should say? I looked and I didn't
2 see anything saying that you felt that that was
3 biased because it was non-random.

4 A I describe her results as unreliable
5 because they relied upon a non-random sample. I
6 presumed that she was going to fix that for the
7 rebuttal testimony.

8 Q Okay, can you help me out and tell me
9 where it is you say that? Where is it that you
10 raise the non-randomness, if you will, as being
11 an issue? It may well be in here, I just looked
12 during the break and I did not see it.

13 A It's on page 15, section 4, subheading
14 A, which the subheading is titled, "Robinson
15 relies on a non-random sample and filtered data."

16 Q Okay, where do you say it's a bad idea
17 to use a non-random sample? Is that -- I saw the
18 reference that she uses a random sample. I
19 didn't see anything saying it was bad.

20 A I'll read a couple of sentences for
21 you. The second and third. "This overlap is
22 itself a non-random sample and not representative

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1 was trying to be cognizant of time. In my
2 written rebuttal report, I describe it as being
3 biased. I don't see in the paragraph here the
4 fact that it is biased to IPG's advantage, but I
5 -- that is a fact. But either way, it's biased
6 and therefore unreliable.

7 Q You're saying in addition not just
8 biased, but you've calculated that the bias works
9 in the benefit of IPG?

10 A It's implied based upon her subscriber
11 count shift factor.

12 Q But you haven't actually -- you
13 haven't actually calculated that to confirm that?

14 A You would need a representative sample
15 to be able to calculate the magnitude. I only
16 know the direction of the bias.

17 Q But you haven't calculated it?

18 A I'll repeat. It's -- I haven't
19 calculated it --

20 Q Then the answer is no.

21 A I --

22 JUDGE BARNETT: He just said he had

193

1 not calculated it.

2 THE WITNESS: Not only did I not, I
3 cannot. I would need a random sample.

4 BY MR. BOYDSTON:

5 Q Fair enough. All right, now I
6 understand. With regard to the issues of the
7 overlap and the incidents of large stations being
8 over-represented in the overlap, do you recall
9 that?

10 A Yes.

11 Q And you felt that that resulted in a
12 bias in IPG's favor, correct? You didn't use the
13 word bias, but I think you were saying in your
14 oral testimony that that inflated IPG's share,
15 correct?

16 A That is correct.

17 Q Now, again here I think that looks --
18 I did not see that in your rebuttal testimony.
19 At page 6 of your rebuttal testimony, you do
20 discuss the time of day issues. Admittedly, what
21 you discuss is time of day issues, but I don't
22 see anywhere where you explain that there's -- it

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1 asked and answered.

2 MR. BOYDSTON: Well, he's using -- in
3 case he was quantifying it in some other way.

4 THE WITNESS: One way to quantify it
5 --

6 MR. OLANIRAN: I have an objection.

7 JUDGE BARNETT: Yes, it's sustained.

8 BY MR. BOYDSTON:

9 Q You were just saying now one way to
10 quantify it would be -- well, actually, never
11 mind. I'll move on. Now, let's move to time of
12 day, which you address, start to address, at page
13 6 of your rebuttal testimony.

14 In your oral testimony here, you
15 discuss the averages of Nielsen data and you
16 expressed it in terms of viewing it as three
17 different columns. Do you recall how you
18 described that orally?

19 A Yes.

20 Q And that -- and you gave an example of
21 why it was that that would not -- why you had a
22 criticism of why it was not appropriate, right?

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1 works in the favor of IPG.

2 A Are you speaking with respect to time
3 of day or now just the overlap?

4 Q I beg your pardon. I switched gears,
5 and I think it's because my writing was messy.
6 Let's stick with the overlap. Do you discuss the
7 impact of that in IPG's favor in your rebuttal
8 statement?

9 A As I spoke moments ago, I just
10 referred to it as a bias. I did not in my
11 rebuttal testimony, written testimony, describe
12 it as being in IPG's favor.

13 Q Okay, but you didn't calculate to what
14 degree?

15 A I'll repeat. I'm not able. One is
16 not able to calculate to what degree because it's
17 a non-representative sample. Question is what
18 would be volume share be in a representative
19 sample?

20 Q Okay, you didn't calculate it and it's
21 not quantified anywhere as a result?

22 MR. OLANIRAN: Objection, Your Honor,

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1 A That wasn't a criticism. That was
2 just a description of her methodology.

3 Q Okay, but ultimately, you made the
4 statement that you felt that as a result the
5 analysis was -- I caught the word incomplete.

6 A It's incomplete because it only has
7 this time of day shift factor on volume. It does
8 not take into consideration, for example, the
9 number of distant subscribers who have access to
10 this program, and that's an economic issue that
11 Dr. Robinson herself said was important.

12 More importantly, it does not take
13 into consideration whether or not anyone actually
14 viewed any of IPG's programs, which I think is
15 very important to note.

16 Q Now, is that in your report at page 6
17 or thereafter?

18 A It will be in my report, yes.

19 Q Okay. Page 6 I see. Paragraph 10 is
20 where you start your time of day discussion, and
21 then it continues onto the next page to paragraph
22 11.

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1 A It would be in paragraph 11. Would
2 you like me to read paragraph 11 into the record?

3 JUDGE BARNETT: It's in the record.
4 You don't need to read it.

5 BY MR. BOYDSTON:

6 Q It doesn't say here that that benefits
7 IPG though, does it?

8 A No, it does not. Nor did I say that
9 earlier. All I said is it's an incomplete
10 measure, and therefore not in line with the
11 measure with respect to usable royalty share.

12 Q Now, you, in your rebuttal report,
13 addressed titles claims issues and criticized Dr.
14 Robinson for essentially including titles that
15 she shouldn't have, correct?

16 A That is correct.

17 Q Have you had the chance to review Dr.
18 Robinson's revised numbers that have addressed
19 that? I presume not.

20 A Well, my team actually has started to
21 and has not made all the corrections. For
22 example, Tomorrow's World, which I reference in

199

1 A No criticism of Dr. Gray, but of Dr.
2 Robinson.

3 Q Thank you.

4 A One of the criticisms is with respect
5 to the written rebuttal testimony of Marsha
6 Kessler with respect to the Canadian programming,
7 but again, as I said on Monday, I have to be told
8 which title is compensable, and which title goes
9 to IPG or MPAA. I don't have a dog in this hunt.

10 Q Understood. With regard to relative
11 distant viewership, you discussed Nielsen data,
12 and you said -- I think you said many times that
13 you believe that the 2000-2003 Nielsen data is
14 useful and works in making that calculation.
15 Correct?

16 A Yes.

17 Q And just to confirm, that Nielsen data
18 is Nielsen data for distant viewing, correct?

19 A Nielsen cable data, yes.

20 Q It's not for local viewing, correct?

21 A For the distant viewing. There's
22 local ratings I use in the regression.

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1 here under page 18, Section C, that is a title
2 that IPG did not claim that Robinson includes.
3 It's actually still in the data that we received
4 yesterday.

5 Similarly, we see many titles. We see
6 Canadian titles still in the data that have not
7 been removed. So, there are -- the calculation
8 that we received yesterday still seems to have
9 flaws in its application.

10 Q That's because you believe that those
11 Canadian programs are not compensable, right?

12 A That's because I didn't total that.
13 Also, Tomorrow's World certainly is not one that
14 IPG appears to be claiming.

15 Q And so, your understanding of the
16 Canadian inclusion or non-inclusion is totally
17 dependent upon what you've been told by counsel
18 in terms of criteria, correct?

19 A Correct, but --

20 Q And so, your criticism of Dr. Gray is
21 based on what you've been told the criteria is by
22 counsel?

200

1 Q And those local ratings I believe are
2 just the diary, or excuse me, the meter ratings?

3 A Local ratings? I understand them to
4 be the meter, yes.

5 Q Which it's a meter, rather than
6 someone writing it down by hand, which has
7 something of an enhanced credibility, I suppose.
8 Would you agree?

9 A It actually has pros and cons. One of
10 the sort of cons, of course, is with respect to
11 ratings data, which is the meter data. That's
12 just a television being tuned in to a program,
13 whereas the diary data someone is actually
14 watching it.

15 I can tell you just the other night,
16 I went to sleep in front of the television and
17 woke up but a couple hours later.

18 Q A common problem. Meter data is also
19 less prevalent, I think, than diary data, by a
20 pretty fair margin. Correct?

21 A That's what I've been told by Nielsen,
22 yes.

201

1 Q Now, you said that you looked at the
2 IPG programs as to when they fell during the day
3 part viewing. Day parts, correct? You found
4 that they were -- there was some concentration of
5 them between 12:00 and 6:00 a.m.?

6 A Yes, and this is consistent with Dr.
7 Robinson's time of day shift factor.

8 Q Now, when did you -- when did you make
9 that analysis?

10 A I'm not certain exactly. Someone on
11 my team did it. I didn't do it myself, but I
12 believe it might've been last week.

13 Q So, it was not in your -- fair enough
14 to say it was not in your report since the report
15 was filed before then?

16 A That is correct.

17 Q Now, you also apparently did a zero
18 viewing analysis. You said last summer. Do you
19 recall that testimony?

20 A Not sure what you mean by zero viewing
21 analysis.

22 Q Well, you referred to -- let's start

202

1 with this. I know I heard last summer that you
2 performed a certain analysis. You thought it was
3 last summer. Do you recall that?

4 A I did a lot of analysis last summer.

5 Q Well, it was something you mentioned
6 about 15 minutes ago.

7 A I'm not actually sure what analysis I
8 referred to 15 minutes ago, but I did quite a bit
9 of sensitivity analyses this past summer, and I
10 might actually have done this very one this past
11 summer. But I'll just double check. By this
12 very one, I should say for the record, I'm
13 referring to Exhibit 379.

14 Q Okay. Did you do an analysis of zero
15 viewing at some point before these proceedings
16 that you shared with Mr. Lindstrom?

17 A I don't recall doing an analysis of
18 zero viewing per se. That's why I'm trying to
19 understand what your question is.

20 Q I thought I heard you saying that you
21 performed an analysis of zero viewing last
22 summer, and if you didn't, fair enough.

203

1 A Right. Again, I don't use zero
2 viewing as an issue. I view it as data.

3 Q I understand.

4 A Okay.

5 Q We do view it as an issue, and that's
6 why when you said that, it caught my attention.
7 And if you did an analysis of zero viewing, I was
8 curious because I'd asked you on your direct
9 testimony about that. My understanding is that
10 you had.

11 A Right, that's why I'm confused by your
12 line of questioning at this moment.

13 Q I heard something 15 minute ago.
14 Maybe I misheard it. But just to make the record
15 clear, as far as you know, and no one should know
16 better than you, you have not performed any
17 specific analysis of zero viewing and its
18 implications?

19 MR. OLANIRAN: Objection, Your Honor.
20 Asked and answered.

21 MR. BOYDSTON: Okay, I can see how
22 it's been asked and answered. So, I'll move on.

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1 JUDGE BARNETT: I was going to
2 overrule the objection. So, if you'd like to
3 answer.

4 THE WITNESS: I don't know what I said
5 15 minutes ago, but I --

6 MR. BOYDSTON: I honestly may have
7 misunderstood.

8 THE WITNESS: I never did any analysis
9 with respect to zero viewing. I've done lots of
10 analyses using the data that has observations of
11 zero viewing and I certainly have concluded I
12 don't see any issue with relying upon that data.

13 BY MR. BOYDSTON:

14 Q You've seen data that -- that indicate
15 levels of zero viewing, correct?

16 A Yes. In '00 to '03 proceedings, I
17 know Mr. Galaz did some analysis. So, at that
18 point in time, I feel like he had replicated his
19 analysis. So, if you define that as an analysis
20 of zero viewing, all it is doing is counting the
21 number of observations where Nielsen has no
22 recorded viewing.

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1 So, I certainly had people replicate
2 Mr. Galaz, and --

3 Q Did they more or less replicate his
4 results?

5 A I don't recall, but I'm sure they
6 found some results. I just don't recall at this
7 moment. This was a couple years ago. But again,
8 we didn't make any conclusions that the data was
9 unreliable.

10 Q And in doing that analysis, did you
11 recall generally that you found instances of zero
12 viewing depending upon the channel ranging
13 anywhere from only like a few percentage points
14 to 100 percentage points at times depending upon
15 the stations?

16 A There was variability.

17 Q And do you also recall looking across
18 the board and averaging zero viewing incidents
19 across stations, in addition to just looking at
20 individual stations? Because Mr. Galaz did that;
21 I'm thinking you probably replicated that as
22 well.

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1 A I or my team probably replicated his
2 results.

3 Q And do you recall if you did that
4 averaging zero viewing across stations, you got
5 numbers which were certainly above 50 percent.
6 Sometimes as high as 80 percent?

7 MR. OLANIRAN: Objection, Your Honor.
8 Now, we are really getting outside the scope of
9 Dr. Gray's testimony. He's asking Dr. Gray to
10 testify to an analysis he may have -- may not
11 have done maybe two years ago. It's not in
12 evidence in this proceeding. May have been
13 related to evidence from a last proceeding.

14 JUDGE BARNETT: I don't need a
15 narrative, Mr. Olaniran. I've got the objection.
16 Do you want to respond?

17 MR. BOYDSTON: He raised -- he raised
18 zero viewing in his testimony, and he also raised
19 relative viewership, and that's --

20 JUDGE BARNETT: But you've asked, I
21 think three times, whether he's done an analysis
22 of zero viewing and I believe he has answered

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1 three or four times he did not.

2 MR. BOYDSTON: Well, I know. Now, I'm
3 preferring to what -- he said he replicated Mr.
4 Galaz's results. I'm just asking him a question
5 about what he observed in that.

6 MR. OLANIRAN: He said he replicated
7 Mr. Galaz's results from another proceeding.

8 MR. BOYDSTON: True, but he's saying -

9 MR. OLANIRAN: Or someone on his team
10 did that. Now, we're getting into the specifics
11 of the results of that analysis, which is --

12 JUDGE BARNETT: Your relevance
13 objection is sustained.

14 MR. OLANIRAN: Thank you.

15 BY MR. BOYDSTON:

16 Q You have said that you don't think
17 zero viewing is a problem, correct?

18 A I've said that repeatedly, yes.

19 Q And so, you don't think it's a problem
20 if it's at 80 percent averaged across all
21 stations?

22 A In large part because we make hundreds

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1 of thousands of observations of positive viewing,
2 and it's just indicative that this viewing is not
3 relatively common.

4 Q Would your opinion be the same if zero
5 viewing was an incidence of 99 percent across all
6 stations on average?

7 A It depends upon the number of
8 observations I have of positive viewing.

9 Q At some point, if it got high enough,
10 would you say, "Well, I guess now it is an
11 important issue?" Like 99 percent, for instance?

12 A I don't know where the break would be,
13 but at some point I would start thinking about
14 the specification, what kind of econometric model
15 to apply toward the -- it's a level now where
16 certainly you can't do a regular linear
17 regression. That's why I do the Poisson.

18 Q So, do you -- I'm not going to ask you
19 for a specific break point because you said you
20 don't know what it is. But is there -- do you
21 believe that there would be some point at which
22 if you saw zero viewing above a certain point,

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1 and I'm asking you to define that point, or would
2 there be some point where you would say, "Okay,
3 now the zero viewing is so high I do think it is
4 an issue?" Or, is it just a factor that wouldn't
5 matter no matter how high it got?

6 Q Every time I work with data, which is
7 quite often, I look at it carefully, analyze it
8 and try to consider what kind of a model to apply
9 to it, what kind of statistical method to apply,
10 and so whether or not there is a lot of missing
11 information, whether or not there's a lot of any
12 particular values where one needs to do a
13 sophisticated analysis.

14 Sitting here today, I can't think of
15 a particular break point where I would change my
16 methodology, but I can tell you this: Given an
17 instance of zero viewing in this matter, I'm
18 perfectly comfortable with the application that I
19 performed.

20 Q You're not rejecting the notion that
21 at some level, perhaps not here that we see, but
22 at some level, zero viewing might theoretically

210

1 become a problem I assume, correct? Because at
2 some point, it would indict the lack of data
3 points so --

4 MR. OLANIRAN: Objection to
5 speculation, Your Honor.

6 MR. BOYDSTON: I'm asking for his
7 opinion. It is speculation. That's right. It's
8 his opinion I'm asking for.

9 JUDGE BARNETT: Overruled.

10 THE WITNESS: Well, at the limit, as
11 we statisticians always like to go there, at the
12 limit if there are zero viewing throughout, I
13 would hope these proceedings would not take place
14 going forward.

15 BY MR. BOYDSTON:

16 Q What if I were just a tick? What if
17 it was just a tick below zero? I mean at some
18 point, you would have -- of course if it was 100
19 percent zero viewing, of course it would be
20 absurd. How about at some point -- is there some
21 point less than 100 percent that you would still
22 say it's a problem, or would you just consider

211

1 the factor to be a problem -- not a problem ever?
2 A I'll repeat. If the data was such
3 that most -- the vast majority of observations
4 were zeros, pretty soon I think what would make
5 more sense is to do some analysis almost by hand.

6 So, again, every time I get -- I
7 receive lots of data, and there's a lot of data
8 in this case. I roll up my sleeves with the
9 team. Pull out the proverbial chalkboard and
10 whiteboard, and decide what's the best approach
11 to come up with reasonable and reliable results.

12 That's what I've done in this matter.
13 I think to talk about a matter where the data
14 might be a lot worse than here, would I do
15 something? There could be a case where the data
16 is worse, where I'd have to change my
17 methodology.

18 Q Once again, you are opining as to the
19 instance of zero viewing here not being a
20 problem, despite the fact that you have not done
21 any zero viewing specific analysis, correct?

22 A Well, I --

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1 Q Yes? Yes or no, and then you give an
2 explanation. You have a -- you're opining that
3 it's not a problem here. True?

4 A That is correct.

5 Q And you haven't done any zero viewing
6 analysis, true?

7 MR. OLANIRAN: Objection, Your Honor.
8 Vague.

9 MR. BOYDSTON: I'm repeating what
10 you've been saying.

11 THE WITNESS: Again, I --

12 JUDGE BARNETT: Overruled.

13 BY MR. BOYDSTON:

14 Q True or false, you haven't done a zero
15 viewing analysis? I mean we've gone over this.
16 You said no, correct?

17 A I'm trying to answer your question.

18 Q Have you done a zero viewing analysis
19 or not? I think the answer was yes -- I mean no.

20 JUDGE BARNETT: Give him the chance to
21 answer the question.

22 BY MR. BOYDSTON:

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1 Q Have you done a zero viewing analysis?

2 A Let me try to answer. You always --
3 sometimes you can't give yes or no without
4 context.

5 Q Well, at the beginning of the
6 proceeding, we tell people to say yes or no
7 first, and then give their explanation.

8 A No. And my explanation is the
9 following: Again, as I described at length on
10 Monday and even greater length in my direct
11 testimonies, just the nature of the data, the
12 fact that you were able to run the Poisson
13 regression and the characteristics that were in
14 the output files that Dr. Robinson had would lead
15 me to believe that it's a reliable methodology.

16 MR. BOYDSTON: Your Honor, I move to
17 strike his response after no.

18 JUDGE BARNETT: Sustained.

19 BY MR. BOYDSTON:

20 Q Let me ask you to take a look at your
21 rebuttal, written rebuttal statement, page 17.
22 Direct your attention to Table 3.

214

1 A Yes.

2 Q Let me ask you -- I think I understand
3 what this table says, but why don't you tell me
4 in your own words what this depicts?

5 A My understanding is that these are
6 programs that IPG claimed with regards to -- in
7 the documents that we received in discovery, and
8 these are cases -- I give an example in one of
9 the paragraphs, The Three Stooges.

10 So, The Three Stooges is one in the
11 spreadsheet that we received at footnote 20. In
12 that spreadsheet it said that IPG was claiming
13 Three Stooges for the years 2007 through 2009.
14 Yet in her analysis, Dr. Robinson used -- treated
15 Three Stooges as an IPG claimed program from the
16 entire period 2004 through 2009.

17 So, what that table does is counts the
18 number of transmissions of Three Stooges from
19 2004 through 2006, which is the time period where
20 IPG did not observe a claim for that title
21 according to that document. Yet, Dr. Robinson
22 treated it as an IPG title. And that's the case

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1 where each of those titles in Table 3 for
2 satellite there -- there's many more. That's why
3 I cut it off. It's in all of their titles in
4 italics.

5 Q And was it your understanding, or did
6 you have an understanding that this was a coding
7 error related to a temporal restriction to i.e.
8 years of claims.

9 A I would define it as a mistake. A
10 coding mistake, yes.

11 Q Now, did you run a full analysis of
12 the coding mistake to come up with all these
13 titles? I assume that's how you -- you get some
14 sort of process to identify all these titles.

15 A Someone on my team did this one and
16 prepared this table, yes.

17 Q Okay, when they did that, did they
18 restrict it only to look for IPG titles that were
19 subject to this airing?

20 A It was based upon Robinson's
21 documents. So, therefore, yes.

22 Q So, did you check to see whether or

216

1 not this error affected any MPAA titles?

2 A As far as I'm aware, we did not make
3 that error.

4 Q Did you check for that error?

5 A Check for that error? With respect to
6 Dr. Robinson do you mean? Go ahead. Ask the
7 question.

8 Q You looked at Dr. Robinson's
9 underlying data and her report and you discovered
10 that due to a coding error, Dr. Robinson had
11 accorded IPG credit for these programs. Did you
12 also look to see whether or not Dr. Robinson's
13 error also resulted in the MPAA being credited
14 for programs outside of its temporal
15 restrictions?

16 A I understand your question. The
17 answer is there's no need to do that based upon
18 the way she performed her analysis because she
19 took the IPG data, excuse me, and appended the
20 MPAA data to it that had the sort of appropriate
21 titles and years.

22 So, there's no mistakes with respect

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1 to MPAA as far as I'm aware.

2 Q Did you look further into it to see if
3 perhaps there were some mistakes that included
4 titles for MPAA?

5 A My answer is the same. It's not
6 possible. It's not possible based on my
7 understanding of her approach.

8 Q How did her coding mistakes come to
9 your attention?

10 A Someone on my team sort of brought it
11 to me. So, this is what she does --

12 Q Someone on your team meaning --

13 A Worked directly with me and I
14 supervised.

15 Q How did they come across it if you
16 know?

17 A Actually, the specific person who
18 found it has been working with me for about 18
19 years now. He works with data like a hot knife
20 through butter. So, when he brought this to my
21 attention, I said, "Yes, you found a mistake."

22 I presume he -- I presume maybe he was

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1 trying to replicate Dr. Robinson and have
2 different numbers, and started looking at her
3 code, trying to figure out why it was that the
4 titles and years were different. That's my
5 presumption.

6 But Dr. Robinson's approach is to
7 simply append the MPAA data to the IPG data, and
8 take -- and so, this time constraint would not
9 take place and not interview the MPAA data.

10 Q Are you saying it's not possible that
11 this coding error may have favored the MPAA? And
12 by coding the MPAA with more transmissions
13 outside of the proper time frame?

14 A That is correct. My understanding is
15 it's not possible.

16 MR. BOYDSTON: Okay, that's
17 interesting. I have nothing further.

18 MR. MACLEAN: Your Honor, may I have
19 a very brief cross based on one clarification?

20 JUDGE BARNETT: You may.

21 CROSS-EXAMINATION

22 BY MR. MACLEAN:

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1 Q Dr. Gray, I apologize. It's possible
2 I misunderstood either the question or the answer
3 on this, but were -- I believe you were asked
4 about your use of CBC subscriber data in your
5 methodology.

6 A I may have been.

7 Q And did you answer that you used CBC
8 subscriber data or fee data, fee generation data,
9 in establishing your stratified random sample?

10 A I hope I didn't misspeak. I used the
11 subscriber count to choose my samples.

12 Q Okay. So, you used CDC subscriber
13 data that way. Is that correct?

14 A Yes.

15 Q Did you also use it in -- use CDC
16 subscriber data in performing your regression
17 calculations?

18 A I used the CDC data in terms of --
19 because there's information with respect to the
20 number of subscribers of retransmitted stations.
21 So, that will be in my regression as well.

22 Q And so, I'm just looking as an

220

1 example, at MPAA Exhibit 6 and 7. I'm looking at
2 -- this is only an example, but I'm looking at
3 the top of table E-3-A. It's on page 56.

4 A Yes.

5 Q And there at the top it shows you did
6 a regression based on market size, correct?

7 A Yes.

8 Q Is that where you used the CDC data
9 when you calculate the log of market size?

10 A Correct, and market size again is the
11 number of distinct subscribers on this station,
12 at the program at issue at the quarter hour.

13 Q And Poisson regression is a logged
14 linear regression, correct?

15 A That is correct.

16 Q So, in your regression, you used --
17 your top factors there are log of market size,
18 which is the number of distant subscribers,
19 correct?

20 A Correct.

21 Q And log of local ratings which are
22 local ratings, correct?

221

1 A Correct.

2 Q And with respect to calculating these

3 coefficients, you found a positive and

4 statistically significant correlation between

5 both number of distant subscribers and distant

6 viewing, and also local ratings and distant

7 viewing for every year. Is that right?

8 A That is correct, yes.

9 MR. MACLEAN: No further questions.

10 MR. OLANIRAN: I have no re-direct,

11 Your Honor.

RE-CROSS-EXAMINATION

BY MR. BOYDSTON:

14 Q Very quickly. I can do it from here.

15 On the subject you were just discussing, the CDC

16 guide that you used for that, was it satellite

17 data, or cable data or both?

18 A For this particular table, this was

19 satellite, but I also used it in the cable as

20 well.

21 Q So you used satellite data and cable

22 data?

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1 what she describes as core quoting from testimony

2 of Mr. Lindstrom of Nielsen. "Huge relative

3 errors in Nielsen data." And that is a criticism

4 of your analysis to the extent it relies on the

5 Nielsen data. Because of what she says,

6 according to Mr. Lindstrom's testimony, it has

7 huge, relative errors.

8 Can you respond to that? Please, feel

9 free to read the whole footnote or any other part

10 of that page before you answer.

11 THE WITNESS: There's a little bit of

12 information that Nielsen possesses with respect

13 to the relative errors and data at issue.

14 Therefore, it was impossible to calculate the

15 confidence interval, and I had to sort of employ

16 a relatively new, developed in 1970's but now

17 widely accepted technical bootstrap, in order to

18 computationally calculate the confidence

19 internal.

20 JUDGE STRICKLAND: You have that in

21 the footnote in your statement?

22 THE WITNESS: I do.

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1 A Correct, yes.

2 MR. BOYDSTON: Okay, thank you.

3 JUDGE STRICKLAND: One question for

4 you, do you have Dr. Robinson's rebuttal,

5 rebuttal to the MPAA in front of you?

6 MR. BOYDSTON: Your Honor, may I

7 approach and see if it --

8 JUDGE BARNETT: Thank you, Mr.

9 Boydston.

10 JUDGE STRICKLAND: Rebuttal for the

11 written direct statement of the MPAA.

12 THE WITNESS: Okay. I believe this is

13 it, which is the -- yes, rebuttal to the --

14 MR. BOYDSTON: That is it. Thank you.

15 JUDGE STRICKLAND: Can you turn, sir,

16 to page 8, and take a look. I want to ask you

17 about footnote 10 in Dr. Robinson's rebuttal

18 statement. Are you there?

19 THE WITNESS: I am.

20 JUDGE STRICKLAND: Okay, I'll ask you

21 just a general question then give you a chance to

22 read it. My question is she makes mention of

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1 JUDGE STRICKLAND: Okay.

2 THE WITNESS: And I'm happy to talk

3 about that at length because I think it's a --

4 JUDGE STRICKLAND: We'd be happier

5 that you don't.

6 THE WITNESS: But in this context, the

7 only way to estimate confidence intervals, given

8 the unknown on a case-by-case method is to

9 simulate errors using the bootstrap methodology,

10 and that's what I did.

11 JUDGE STRICKLAND: I don't want to go

12 down this rabbit hole, but I'll take a couple

13 little steps. Is there a lack of -- of

14 confidence greater when you use the bootstrap

15 methodology than if you actually have the

16 confidence intervals from the actual data? Is

17 that sort of a second best?

18 THE WITNESS: The short answer is it's

19 actually ambiguous because there's a large

20 literature on it now, it's an amazingly accurate

21 tool, and a powerful tool. But it is

22 computationally heavy. It's takes my program,

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1 which takes approximately a week to run in.

2 My server has dozens of processor and
3 lots of memory. But it does all these
4 simulations and creates errors, and does what are
5 called Monte Carol experiments to see how
6 accurate the bootstrap methodology is. It's now
7 embraced by the statistical sort of community.

8 JUDGE STRICKLAND: So, when you
9 mention the bootstrap methodology in one of your
10 statements admitted as evidence in this
11 proceeding, was that in your direct testimony?

12 THE WITNESS: That was in my rebuttal
13 testimony.

14 JUDGE STRICKLAND: Your rebuttal
15 testimony?

16 THE WITNESS: Correct.

17 JUDGE STRICKLAND: And Dr. Robinson
18 also mentioned, and I don't think it's mentioned
19 here in the footnote that I referenced; she
20 mentioned the existence of large standard errors
21 as well that are the unknown -- actually, I must
22 correct myself. "Unknown standard errors with

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1 regard to the Nielsen data." Do you have a
2 response to that?

3 THE WITNESS: My understanding is
4 that's actually -- isn't that -- standard errors
5 and relative errors are cut from the same cloth.

6 JUDGE STRICKLAND: Are you saying that
7 they are synonymous?

8 THE WITNESS: Not synonymous, but I
9 mean standard errors are measures of error with
10 respect to the estimate. Relative errors are
11 sort of the magnitude of it.

12 So, I got a standard error 0.1. It's
13 put in context with the relative error.

14 JUDGE STRICKLAND: So, you're saying
15 that the bootstrap methodology addresses both of
16 those concerns, given that they're cut from the
17 same cloth?

18 THE WITNESS: Indeed it's an attempt
19 to address them.

20 JUDGE STRICKLAND: So, you're saying
21 that bootstrap methodology substitutes perfectly
22 for a direct determination of confidence

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1 intervals, or it's the best alternative?

2 THE WITNESS: I would say it's the
3 best alternative. It's -- it's really the only
4 alternative that I could do straight-faced in
5 front of my peers.

6 JUDGE STRICKLAND: Have you ever
7 relied upon that bootstrap methodology to
8 determine confidence intervals, testifying as an
9 expert witness?

10 THE WITNESS: Not testifying as an
11 expert witness, no. But I've done it in the
12 academic community.

13 JUDGE STRICKLAND: Thank you.

14 JUDGE BARNETT: Any follow on
15 questions from counsel based on this?

16 MR. MACLEAN: No, Your Honor.

17 MR. OLANIRAN: No, Your Honor.

18 MR. BOYDSTON: No, Your Honor.

19 JUDGE BARNETT: Thank you, Dr. Gray.

20 THE WITNESS: Thank you.

21 (The witness steps down.)

22 JUDGE BARNETT: It appears we have an

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1 hour and ten minutes, and three parties. Twenty-
2 three apiece. Twenty-three and one-third apiece.
3 Who is on first?

4 MR. BOYDSTON: I presume we go in the
5 same order.

6 MR. MACLEAN: My friend at MPAA has
7 offered to yield his spot to me.

8 MR. OLANIRAN: What are friends for?

9 MR. MACLEAN: Actually, I don't
10 believe I'll use 23 minutes. I have a little bit
11 more to say about IPG's rehashed methodology in
12 this proceeding.

13 Every factor that they rely on here is
14 a factor that was already rejected in the 1999
15 case. In Mr. Boydston's opening statement, he
16 said that IPG had brought a new idea here, and
17 that is that copyright royalties in Canada and
18 elsewhere use the same factors.

19 First of all, it appears not to be
20 true, but based on the testimony and the plain
21 language of the exhibits that have been offered
22 in support of it; but true or not, I don't -- I

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1 don't really see how it is relevant to these
2 proceedings.

3 No witness who testified, testified to
4 enough knowledge of either Canadian or other
5 foreign legal systems to know how the copyright
6 royalty systems work, or what standards are
7 applied in the law. For example, whether a fair
8 market standard is the standard applied.

9 There simply isn't sufficient
10 foundation, and zero relevance to this, which is
11 really the only new idea that IPG has brought to
12 this proceeding that wasn't previously hashed out
13 in the 1999 proceedings.

14 Moreover, they brought issue errors
15 with them to this proceeding. Some of these
16 errors they've attempted to correct, and we
17 haven't yet determined how successful they were
18 through their submissions of revised exhibits.
19 But certainly, Dr. Robinson has been unable to
20 explain, for example, why it is that she does not
21 calculate her valuations based on volumes times
22 all -- or at least all of her own correlated

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1 valuation factors.

2 With respect to the SDC and cable
3 anyway, or the devotional category, that would've
4 reduced her -- her valuation. You can see for
5 yourself just by looking across the row. See
6 below the bottom of her range in every single
7 year. Would've been different in satellite,
8 where her results are more spiky, I will say.
9 But the result in cable? She has no explanation
10 for these kinds of errors.

11 The SDC have come with a methodology
12 that is tested and fair. To summarize briefly,
13 and to clarify a mischaracterization that was
14 made today that Dr. Erdem explains, Dr. Erdem has
15 rejected a time-based methodology. We don't use
16 quarter hours at all for one purpose. We reject
17 the idea that a daily program is more valuable
18 than a once-a-week program.

19 We reject that idea that a one-hour
20 program is more valuable than a half hour
21 program. That does not appear in Dr. Erdem's
22 methodology, which by the way is one of the

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1 significant reasons why Dr. Robinson's rebuttal
2 to Dr. Erdem's methodology, particularly using
3 hypotheticals, is simply -- is simply false.

4 What we do is we take local ratings,
5 and we multiply them. That is to say scale them
6 by the number of distant subscribers receiving
7 those programs. For our local ratings, we use
8 Nielsen ratings from an off the shelf Nielsen
9 reports, reported on devotional programming that
10 includes ratings for devotional programs,
11 according to the standard set forth in the report
12 for all Nielsen DMAs. We do not rely on a
13 sample.

14 You saw that play out with respect to
15 IPG's own methodology, which results in zero for,
16 for example, year 2000 satellite, because their
17 methodology didn't have sufficient data to
18 capture their own programs in that particular
19 case.

20 Because they're relying on a sample,
21 not a census. It's simple. A sample that was
22 not randomly selected, a sample of only a small

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1 percentage of all the stations out there.

2 The report on devotional programming
3 that you just mentioned a moment ago: We relied
4 upon, if I can calculate in my head for just a
5 second, approximately 30 different reports on
6 devotional programming. One from 1999; one from
7 2000; one from 2001; one from 2002; one from
8 2003, which was all the available reports on
9 devotional programming that we were able to get
10 for that period of time.

11 For 2004 to 2009, we had all four
12 reports on devotional programming from each of
13 those years. So, that I believe comes to 29.
14 I'd have to -- I'm sorry, Your Honor. I have to
15 do the math in my head, but it would be whatever
16 four times 2004 through 2009 is, plus one times
17 1999 through 2003.

18 In 1999, by contrast, the judges
19 themselves chose to rely on a single report on
20 devotional programming for 1999 in making their
21 allocations, and did not scale based on -- based
22 on subscribership.

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1 To that extent, the SDC methodology
2 presented in this case is better on both counts.
3 One, we have more data. Two, we scale based on
4 subscribership. Our criticism has been raised
5 relating to the way Dr. Erdem determined that
6 there is a positive correlation with respect to
7 local viewing and distant viewing.

8 Dr. Gray himself has found for every
9 year, at least for every year he had distant
10 viewing data, that there is a positive and
11 significant correlation between local viewing and
12 distant viewing based on ratings measurements and
13 between local viewing and -- I'm sorry, and based
14 on subscribership.

15 JUDGE STRICKLAND: Am I right in
16 understanding the ration that he uses? So, he
17 plugs in all of these other year's figures that
18 he has; he creates the ratio based on the
19 February 1999 data. Am I missing that?

20 MR. MACLEAN: No, Your Honor. Not at
21 all. Not at all. Because we don't apply a
22 regression coefficient. The reason we don't

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1 year. Dr. Erdem didn't apply regression at all.
2 He calculated correlation coefficient only for
3 the purposes of satisfying himself that -- that
4 local ratings do translate into distant -- into
5 distant viewing.

6 JUDGE STRICKLAND: What were the
7 inputs for him to calculate that correlation
8 coefficient?

9 MR. MACLEAN: He described in his
10 testimony --

11 JUDGE STRICKLAND: You summarized
12 this?

13 MR. MACLEAN: Yes, Your Honor. To calculate
14 that correlation coefficient, which bear in mind
15 he does not use in reaching his results but only
16 to satisfy himself of the correlation, he uses
17 the local ratings data from 1999 report on
18 devotional programming, and the -- and a distant
19 ratings measure based upon calculated from the
20 distant HHVH data that we have.

21 JUDGE STRICKLAND: And that local 1999
22 report on devotional programming in the

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1 apply a regression coefficient is because we only
2 have -- we don't have a -- we don't have a log of
3 regression. We only have the data for 1999 for a
4 linear regression.

5 We also don't have the data for a
6 multiple regression. Therefore, because a
7 calculation of a linear regression, a linear
8 single regression will result only in a single
9 coefficient, which would then be used to scale
10 every single value.

11 When you calculate the percentages, it
12 doesn't matter what that coefficient is, as long
13 as it is positive. You know it is positive
14 because the correlation is positive. Nobody
15 seems to be arguing that there is a negative
16 correlation between local viewing and distant
17 viewing.

18 As long as that coefficient is
19 positive, it is irrelevant what the value is
20 because it will cancel out the numerator with a
21 denominator when you calculate a percentage. So,
22 there was no need to apply regression for every

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1 numerator; that's February 1999, correct?

2 MR. MACLEAN: Correct, correct. But
3 remember, the only reason we used that was just -
4 - was simply to satisfy Dr. Erdem that there is a
5 correlation. What precisely the correlation is
6 it doesn't factor into his calculation.

7 JUDGE STRICKLAND: His correlation was
8 0.9, correct?

9 MR. MACLEAN: Yes, Your Honor.

10 JUDGE STRICKLAND: So, you're saying
11 you understand his testimony as reported to mean
12 that if that correlation was 0.1 positive, that
13 would've been enough to continue to make the
14 correlation?

15 MR. MACLEAN: Obviously, the higher
16 the correlation, the more significant.

17 JUDGE STRICKLAND: So, the correlation
18 coefficient does matter?

19 MR. MACLEAN: Well, what Dr. Erdem
20 testified is that he wanted to know that it was
21 positive and significant.

22 JUDGE STRICKLAND: Did he give us any

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1 testimony as to how he determined that the
2 threshold of significance was met?

3 MR. MACLEAN: If I'm not mistaken,
4 Your Honor, in written direct testimony, he -- he
5 -- I'm not sure whether it was Pearson's chi-
6 square significance test. It might've been. I
7 would have to look at his written direct
8 testimony to see if he -- if he referenced how he
9 determined significance. But 0.9 correlation
10 only goes from 0 to 1, or actually -0.1 to 1. A
11 positive correlation can only go between 0 and 1.

12 A 0.9 correlation coefficient means
13 that 90 percent of the variance in one variable
14 can be related to variance in the other variable.

15 JUDGE STRICKLAND: And that strong
16 correlation occurred in the data related to 1999?

17 MR. MACLEAN: Correct. Dr. Gray
18 similarly found a positive and statistically
19 significant correlation in 2000, 2001, 2002,
20 2003, which is the basis for his own regression.

21 So, I don't think there's any party in
22 this proceeding who can argue, at least not based

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1 Gray's analysis out of it for a second. It's --
2 are you saying it's an evidentiary presumption?

3 MR. MACLEAN: Your Honor, I'm saying
4 it's a statistical and economic presumption that
5 Dr. Erdem applied.

6 JUDGE STRICKLAND: Is it an
7 evidentiary presumption?

8 MR. MACLEAN: I think that's a -- I'm
9 not aware of a rule of evidence that would go one
10 way or the other on that question, Your Honor.

11 We submitted this testimony through expert
12 witness testimony. It's a matter of your
13 weighing the expertise of the witness.

14 JUDGE STRICKLAND: To conclude that
15 the presumption should follow from year to year
16 to year, would not necessarily be a statistical
17 issue. It would also be a matter of factual
18 evidence separate and apart from statistical
19 evidence as to whether there were changes in
20 viewing habits, changes in shows, a whole host of
21 other things that may or may not impact it,
22 correct?

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1 on analysis or data, that there is not a positive
2 and statistically significant correlation between
3 local viewing and distant viewing.

4 Nor is there any party in this
5 proceeding who can argue that there is not a
6 statistically significant correlation between --
7 between distant subscribership and distant
8 viewing.

9 JUDGE STRICKLAND: And you've come to
10 that conclusion with regard to the SDC's data
11 because the correlation coefficient was high
12 enough in the 1999 data; you then use that as a
13 threshold to say, "Now we can perform that type
14 of exercise local -- to distant viewing for all
15 subsequent years." And you can do that simply
16 because you have the correlation in 1999. So,
17 that creates a presumption that correlation
18 should continue year after year?

19 MR. MACLEAN: I think it's a fair way
20 of saying, Your Honor, that it's a presumption
21 that is confirmed by Dr. Gray's analysis.

22 JUDGE STRICKLAND: Let's leave Dr.

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1 MR. MACLEAN: Well, again, I think
2 that would depend on what -- on what you think is
3 important in terms of local viewing that would --
4 that would impact on distant viewing.

5 JUDGE STRICKLAND: Well, I don't know
6 whether it's important or not important other
7 than what I hear in the evidence, which is why I
8 asked the question about evidentiary presumption.
9 Is it your position that you have the burden of
10 showing that that correlation continued from year
11 to year to year, and you satisfied -- and you
12 satisfied it? Or, we should give you a
13 presumption that it exists, and that the burden
14 is on IPG to either rebut the presumption or
15 rebut your evidence?

16 MR. MACLEAN: I think my answer to
17 that would be I don't think that either we or IPG
18 has a burden to show any continuation or non-
19 continuation of a correlation between distant and
20 local viewing. It's a matter of fact finding for
21 the judges. But as a legal matter, as a rule of
22 evidence kind of matter, there's no -- there's no

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1 legal burden to show -- to show a correlation or
2 not.

3 JUDGE STRICKLAND: So, no party has
4 the burden, but the judges have, if you will,
5 generically burden coming up with the decision.
6 What if neither party has satisfied their burden?

7 MR. MACLEAN: Your Honor, you're
8 asking the same question as in 1999.

9 JUDGE STRICKLAND: I do recall.

10 MR. MACLEAN: And my answer then was
11 and remains the -- the judges have the statutory
12 obligation to find a non-arbitrary and -- to find
13 a non-arbitrary allocation in this case.

14 As I said, we can't keep running. You
15 must award. You must make an award. You must do
16 it on a non-arbitrary basis. If you're not
17 satisfied with the evidence that has been
18 presented in these proceedings, you can seek more
19 evidence. You can request witnesses. You can
20 request the parties to present more evidence.

21 JUDGE STRICKLAND: We can bring you
22 back?

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1 point with the disqualification of Envoy than IPG
2 programs.

3 I said disqualification. I mean
4 disqualification in the devotional category of
5 Envoy.

6 At this point in the proceedings,
7 there are only three IPG programs that do not
8 appear in our Nielsen data. Billy Graham, which
9 IPG claimed for 2001 through 2003, and which is
10 satellite only, and which SDC claims from 2004
11 through 2008 in cable and satellite.

12 So, the lack of Billy Graham in
13 Nielsen data, to the extent it has any affect at
14 all, and bear in mind these are occasional
15 specials and not regular daily or weekly
16 programs, which is why it's not in the Nielsen
17 data. The lack of Billy Graham can only hurt the
18 SDC compared to IPG.

19 Salem Baptist Church is another IPG
20 program, a program that is by log viewing is
21 approximately one-tenth of one percent of IPG's
22 tribute sample. We don't have a tribute sample,

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1 MR. MACLEAN: Certainly.

2 JUDGE BARNETT: I think someone very
3 wise once said we have a job to do. I think I
4 heard that somewhere.

5 MR. MACLEAN: Without any -- everybody
6 in this room does, and I hope that we have done
7 everything we can to assist you in doing a good
8 job.

9 The methodology shows that this is a
10 fair one. It is one essentially that the judges
11 themselves have adopted in the 1999 cases, with
12 the changes that I just described, which are
13 changes for the better.

14 As with any methodology, there are
15 some fair criticisms. There will be no perfect
16 methodology presented in this case. It will
17 never happen.

18 IPG has pointed out that we are --
19 that our Nielsen data does not contain all
20 programs; that is a better to the devotional
21 category. That is true. We are missing far more
22 SDC programs. Far more SDC programs at this

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1 but IPG does. One-tenth of one percent of the
2 volume of claimed devotional programming is Salem
3 Baptist Church.

4 In satellite, 0.02 percent of
5 devotional programming by volume in IPG's own
6 tribute sample is Salem Baptist Church. That is
7 2 out of 10,000.

8 The third program of primary focus is
9 a program that nobody in this proceeding has
10 testified as having any value whatsoever, and is
11 a program that wasn't even claimed in the
12 devotional proceedings until these proceedings.
13 In the past it was by program suppliers only.
14 There is simply no testimony one way whatsoever
15 that would imply that either -- that primary
16 focus or for that matter Salem Baptist Church, or
17 for that matter Billy Graham has any value, and
18 without evidence of value it is worthless.

19 No cable system operator or satellite
20 system operator, hypothetical or otherwise, is
21 going to pay one red cent for a program if they
22 don't have reason to believe it has value. And

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1 that's the state of the evidence right now.

2 Your Honor, I -- obviously I could go
3 on, but I think our own written testimony that we
4 submitted is going to be fully adequate for you
5 to conclude that the SDC has presented a fair and
6 reliable methodology that would allow you to
7 reach a non-arbitrary result.

8 Of course, if you found otherwise,
9 we'll be happy to present as much more as you
10 would like.

11 So, in conclusion, we would ask for
12 the allocations as set forth in Mr. John Sanders'
13 rebuttal, valuation expert John Sanders, SDC 641,
14 with the one correction that we've made giving
15 IPG an extra 0.05 percent in 2004 satellite only
16 to correct an error in the CDC satellite data
17 that we received and corrected. Thank you.

18 JUDGE BARNETT: Thank you, Mr.
19 MacLean.

20 MR. OLANIRAN: Good afternoon, Your
21 Honor. I'm going to try to beat Mr. MacLean's
22 record. It's our fifth day of the hearing. It's

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1 that the course that you've set on, not only to
2 create a more expedient process, but to also look
3 at the backlog of undistributed royalties is the
4 correct path. We certainly appreciate your
5 efforts in that direction.

6 As enormous as the record is, and as
7 complex some of the issues may seem, it really is
8 simple, at least in our view in terms of the
9 questions that need to be asked and answered. I
10 think Ms. Plovnick directed Your Honors to the
11 questions that needed to be asked and answered in
12 this proceeding.

13 She talked about what evidence
14 supports the relative market value standard, the
15 standard which no one seems to debate in this
16 proceeding. She talked about reliability of the
17 evidence.

18 The third question was one of
19 credibility of the witnesses supporting that
20 evidence. We think we've answered all three
21 questions.

22 With regard to the first question, we

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1 been a little bit over a month or something.

2 Just to put this into context, this
3 is, as far as I can tell, the single largest
4 royalty distribution proceeding ever litigated.
5 In case you have a compulsory license in terms of
6 the -- so it does have great historical
7 significance.

8 It makes an enormous record of
9 substantive and procedural issues. It has
10 consumed a great amount of time and effort for
11 all involved, and I don't know what expectations
12 Your Honors had in terms of the demands of
13 consolidation we put on -- which create for
14 consolidating cable and satellite.

15 JUDGE BARNETT: We thought it would be
16 -- we thought you would all be equal to the
17 challenge.

18 MR. OLANIRAN: One thing we ask Your
19 Honors is that at a minimum it has been extremely
20 challenging to undertake an administration of
21 distribution of royalties for 60 years. And as
22 representatives of copyright owners, we believe

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1 present -- we presented evidence of viewing to
2 support the relative market values. Viewing is
3 the most recognized measure of value with regards
4 to television programming in the marketplace.

5 Viewing is the currency of the
6 industry. Mr. Lindstrom's testimony in this
7 proceeding and his testimony that was
8 incorporated into the records of this proceeding
9 is very clear that CSOs, SSOs, television
10 stations all manners of platforms across the
11 board use Nielsen data.

12 They use Nielsen data to make business
13 decisions. This -- his testimony was confirmed
14 most recently by Mr. Sanders. It was confirmed
15 also by Ms. Berlin, formerly of --

16 JUDGE STRICKLAND: Mr. Olaniran, are
17 you making an argument that even assuming
18 arguendo that there's a problem or defects in the
19 Nielsen data, that the very fact that the
20 industry utilizes that data even with its defects
21 is alone a sufficient basis for us to rely on the
22 Nielsen data?

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1 MR. OLANIRAN: I think it's a matter
2 of context, Your Honor. As I think Mr. MacLean
3 alluded to this, there's a mass -- we have mass
4 quantities of quantitative data in this
5 proceeding.

6 I have never been involved in a
7 proceeding where the data is perfect. In truth,
8 if it was perfect, we wouldn't need
9 statisticians. So, the question really is given
10 the data is not perfect, and I don't think there
11 will ever be so-called perfect data --

12 JUDGE STRICKLAND: I'm sorry. My
13 question is -- I hate to sound philosophical, but
14 it -- it is evidentiary in nature, which is that
15 -- do -- is the question of whether the data is
16 imperfect or not, or whether it's true and
17 perfect or not, a completely separate question
18 according to your presentation, from the question
19 of whether or not the industry uses it.

20 In other words, we're looking at the
21 marketplace. In the marketplace, things get
22 valued all the time, and they may or may not be

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1 valued properly or accurately, but that's how the
2 marketplace does it.

3 Is it your argument that if -- if
4 commercially in the television data Nielsen is
5 relied upon that presents a separate argument as
6 to why the Nielsen data should be relied upon by
7 us. Separate and apart from many of the
8 statistical arguments that have been made.

9 MR. OLANIRAN: Well, the reason I'm a
10 little bit hesitant is that we have a custom
11 analysis, which is not necessarily the way it is
12 used in the marketplace, but certainly
13 conceptually viewership is at the top of that --
14 philosophically at the top of the heap.

15 So, the question is what evidence of
16 viewership do you have? And certainly, I
17 imagine, even outside of this contest, if you
18 have viewing or evidence of viewership, and if
19 you think there are deficiencies in that -- in
20 viewership in the Nielsen data, the question then
21 is what can you do to correct it, which is
22 precisely the path we took in this instance,

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1 which is because we use sweeps data from '00
2 through '03, and there are certain limitations
3 with that data because they don't go out to
4 overnight. So certainly, you have to think,
5 "Well, okay, how do you enhance the data?"

6 That's the direction that we went,
7 realizing that data -- and realizing that we were
8 going to be criticized for it. So, that's the
9 direction we went. So, I would expect in the
10 marketplace, in a business transaction, if one of
11 the sides presented Nielsen data and the other
12 side challenged it on one basis or another, they
13 would have to be mistaken to bridge the gap
14 between the two parties to the extent that have
15 issues with the data.

16 I don't know if that answers your
17 question.

18 JUDGE STRICKLAND: Yes, thank you.

19 MR. OLANIRAN: Again, I think in terms
20 of the evidence that we have, I -- I was saying
21 that we believe that it would make no sense to
22 try to value television programs without having

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1 some sense of, in relative terms, whether people
2 are watching those programs. It just does not
3 even comport with the invention of television
4 itself because television of course was created
5 so people can watch programs.

6 So, any conversation, any construction
7 of value has to start with whether people watch.
8 If people like programs, they will watch. If
9 they want to watch TV, they will subscribe. If
10 the CSOs put on good programming, subscribers
11 will subscribe and if they maintain good
12 programming, subscribers will be retained. It
13 really is that simple.

14 So, for that reason, we believe that,
15 and according to Dr. Gray, because of the program
16 supplier categories, we're talking about
17 homogenous goods. Viewing is more particularly
18 relevant for this determination. So, the question
19 then goes to what were we just talking about?

20 The next question then goes to what we
21 were talking about, about if you have
22 deficiencies in data. Well, again, I don't

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1 expect -- I have never been involved in any
2 endeavor that is heavy on quantitative data and
3 that has perfect data.

4 The question is what do you make of
5 what you have available to you? And whether or
6 not -- the question that -- the endeavor should
7 not be whether or not you have perfect evidence.
8 The issue should be whether or not the evidence
9 you have available is reasonable and sufficiently
10 reliable to report the standards that you have to
11 apply to allocate them.

12 We believe that Dr. Gray's evidence,
13 along with other related analysis, answered that
14 question. Recognizing the limitation of the
15 Nielsen data, he endeavored to create an analysis
16 that fully recognizes and at least tries to
17 rectify as much as possible of whatever
18 deficiencies may be viewed with respect to the
19 Nielsen viewing data.

20 So, he takes the '00-'03 data, and
21 then performs a correlation analysis between
22 distant viewing and local ratings, and following

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1 that determination engages in a regression
2 analysis using local ratings, time of day,
3 distance values and program times, variables and
4 which is the basic predictive model with respect
5 to distant viewing for quarter hours.

6 Now, without question, and this is not
7 the first time this has been raised. The
8 questions were raised about the so-called zero
9 viewing. And you recall Dr. Robinson not only
10 questioned the existence of zero viewing as bad,
11 she also challenges Dr. Gray's predictive model
12 because it predicts '00 through '03 data -- I'm
13 sorry, viewing.

14 Well, with respect to the zero
15 viewing, you recall my statement. There is no
16 industry standard for zero viewing. She could
17 not tell us exactly what would be considered
18 high; what would be considered low or because the
19 average of facts doesn't exist.

20 The reason it doesn't exist is because
21 of the nature of distant viewing. Some of the
22 other questions I asked her about were, "Well,

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1 what do you do if someone is watching another
2 station?" I gave the example of one subscriber
3 household with nine channels.

4 If you have more channels than you
5 have eyeballs, someone is not -- there are
6 channels that are not going to be watched. It
7 doesn't make the viewing data bad. It just makes
8 for observations as Dr. Gray said. It makes for
9 more observations and conclusions from the
10 aggregation of those observations.

11 So, I think Dr. Gray referred to 1.8
12 million observations that he relied upon to
13 estimate.

14 But in the end, whatever you think of
15 zero viewing, whether you think it's good or bad,
16 the very problem that Dr. Robinson complained
17 about was rectified by the regression analysis,
18 which actually projects, across the board,
19 viewing for every single quarter hour in all of
20 the years at issue.

21 Now, Dr. Robinson raised the issue of
22 why didn't Dr. Gray go back to use the sweeps

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1 data for the '00-'03 period? Why didn't he use
2 the actual viewing data? Of course if he does
3 that, that takes you back to the problem in the
4 first place, which is the zero viewing, which is
5 -- so, you can't have it both ways.

6 You can't complain that you have
7 zeroes and again complain about an attempt to
8 satisfy the zero viewing -- the perceived zero
9 viewing problem.

10 So, that's not a legitimate argument.
11 I think you -- and I think with respect to all of
12 the other issues that Dr. Robinson raised, the
13 reality is Dr. Gray was able, in our view, to
14 satisfactorily explain this. And some, like the
15 omission of indicative data for 2000, for
16 example, I thought he was able to explain how it
17 happened. It was not out of an intentional
18 error. It was just he let the computer pick a
19 year, and that's what happens.

20 After the criticism surfaced, he went
21 back and tested his data, and the results were
22 inconsequential, which then brings me to the

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1 credibility of the witnesses.

2 Three main witnesses: Dr. Gray, Mr.
3 Lindstrom, whose testimony was received by
4 stipulation of the party. Dr. Gray was, I will
5 say, the most critical of all the witnesses
6 because he referred everything together. His
7 record and his CV is -- he's well educated and
8 well-respected in the field. He is experienced.

9 Most importantly, he was articulate on
10 the questions that both counsel asked him, and I
11 think all of the questions that came from the
12 churches. There's no question he has great
13 command of not just the data, but also the
14 statistics themselves.

15 I think I've learned more words today
16 than I've learned probably the last year. I know
17 what bootstrap means.

18 Now, with respect to Mr. Lindstrom,
19 the incorporated testimony and his testament from
20 this proceeding are pretty extensive not just in
21 the way that Nielsen gathers data, but on the
22 specific issue of zero viewing.

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1 I won't regurgitate what he said on
2 the stand in '00-'03 where he testified, but he
3 was pretty articulate on all of these issues and
4 it is actually quite a surprise that it has shown
5 up again as an issue in this proceeding. We
6 thought Mr. Lindstrom was very articulate on why
7 zero viewing is not an issue, why zero viewing is
8 actually an integral process of a survey and why
9 it does not make the Nielsen data any less
10 reliable.

11 With respect to Ms. Saunders, Mr.
12 Saunders, who was charged with the MPA relative
13 distribution process, you -- she was able to
14 refute IPG's claim that with all the experience
15 with the distributors in Europe and in Canada,
16 she was able to disclaim that in Canada and in
17 the distribution process that they don't use --
18 they don't use viewing.

19 Now, with respect to IPG's
20 presentation, Mr. Galaz had testimony but he
21 really did not articulate any economic viewing
22 nor is he qualified to do so. He is not an

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1 expert in the cable industry. He is not a
2 statistician or an economist.

3 So, with respect to whatever opinion
4 or views he may have about what distribution
5 allocation should be undertaken by the judges,
6 his opinions should have no weight. I'd also
7 like to remind the judges that Mr. Galaz has
8 already been found to have lied in this
9 proceeding, and it is our view that any testimony
10 that he has put forth in this methodology should
11 be viewed in the context of his conduct in the
12 earlier part -- in the phase I part of the
13 proceeding.

14 Now Dr. Robinson. With respect to Dr.
15 Robinson's presentation, Dr. Robinson essentially
16 employs a methodology that has been around for a
17 while. Give me one second. I'm going to read to
18 you from the 1997 phase II proceeding. I'm
19 reading -- it's 66433 Federal Register, and I'm
20 at page 66452.

21 It reads, "In sum, IPG focuses on four
22 elements to determine program value: The number

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1 of distance subscribers capable of receiving the
2 program during 1997, the cable license royalties
3 generated during '97 that are attributable to
4 broadcast in the program, the time placement of
5 the broadcast and the length of the broadcast.

6 Now, if you go to the '00-'03
7 proceeding, it is conceptually the same thing.
8 So, it is not as if -- and if you go the -- if
9 you go to this proceeding, you will see similar
10 language in -- in Dr. Robinson's testimony.

11 So, '97 page 2, '00-'03 page 2, Mr.
12 Galaz proposed that concept. So, when Dr.
13 Robinson joined the team, she didn't come up with
14 an original concept. This is a concept that's
15 now being rejected; twice when Mr. Galaz proposed
16 them, once in the '99 proceeding when Dr.
17 Robinson proposed them, and hopefully the same
18 will apply in this proceeding when Your Honors
19 have had a chance to value the evidence.

20 Conceptually, they're not different.
21 There may have been some tweaks there and there.
22 But those four metrics are the cornerstone of

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1 IPG's methodology. They haven't changed since
2 the '97 phase II proceeding, and they're not
3 changing now.

4 Now, I would get into details of what
5 is wrong with each metric that she uses, but I
6 think the record in this proceeding is very clear
7 on that, and as a matter of fact, the record in
8 the '98 and '99 proceeding is very clear on that.

9 But generally speaking, the three --
10 the three metrics that she uses to estimate the
11 relative share completely discount actually
12 viewing, even though she herself testified to the
13 importance of viewing.

14 What's most remarkable though about
15 Dr. Robinson's position is that she could not
16 even really get completely behind her own
17 testimony. You may recall that I asked her about
18 whether or not you could rely exclusively on any
19 one of the metrics. I think yesterday under
20 questioning my Judge Strickler, I think she was
21 moving to towards time of day as the most
22 reliable metric, but then again the question came

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1 us went home tonight and spoke with our families,
2 and started out by saying, "It's really quite
3 simple what I've been doing this last week," it
4 would be a lie.

5 At the same time I think that the
6 choice I have before you can be bracketed as a
7 philosophical one between methodology based upon
8 ratings - and notice I said ratings, not
9 viewership - or multi-varied criteria focusing
10 mostly on subscribership modified by duration of
11 programs and by day part viewing, which has a
12 viewing component that is not ratings.

13 Ratings of the currency of the
14 television industry is what Mr. Olaniran said,
15 and I think that was true for several decades.
16 After all, when the industry first started,
17 paying for TV meant you went to Sears and bought
18 a TV, came home, plugged it in and turned it on.
19 You didn't pay for it. It was on the
20 air. It was free. The reason why that was is
21 because it was funded by advertising. It was a
22 creature of advertising. TV existed as a medium

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1 up again and she kind of changed her mind.

2 I think her response was, "Well, I
3 think you can rely on one of them taking into
4 context the other two." I have no idea what that
5 means. I'm not sure that if you go back and read
6 the record that you would get any clarifying
7 response.

8 JUDGE BARNETT: Two minutes, Mr.
9 Olaniran.

10 MR. OLANIRAN: Two minutes? So, what
11 is clear, however is many times during her
12 testimony when she was being directed by her
13 counsel and on cross-examination by me, she was
14 very clear that Dr. Gray's analysis is a
15 reasonable way to establish relative market
16 value.

17 I thank Your Honors for their time,
18 and we would be requesting that a share of the
19 '00 through '09 cable and '00 through '09
20 satellite as set forth in Dr. Gray's testimony.
21 Thank you.

22 MR. BOYDSTON: Well, I think if any of

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1 of advertising, and therefore ratings were
2 paramount.

3 Ratings continue to be seen as
4 paramount for assessing the value of advertising
5 on television. However, that started to change
6 in the 1970s and '80s, when cable and then
7 satellite television became widespread, because
8 then the economics of TV started to change. It
9 wasn't just dictated by advertising revenue. It
10 started to also be dictated by subscription fees
11 coming to cable companies and satellite
12 companies.

13 That has grown so much that now for a
14 big company like Direct TV, its advertising
15 revenue, in the millions of dollars, is
16 relatively -- it's not relatively. It is
17 insignificant compared to its subscribership
18 revenue. Same thing for the other big companies,
19 as you heard Mr. Egan testify.

20 So, from a starting point, I think it
21 is important to recognize that while ratings have
22 been something that -- that you and others have

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1 naturally gravitated to to try and come up with a
2 reliable metric, I think the time has come to
3 call that into question.

4 As I told you at the beginning of
5 this, we have brought evidence that is new and
6 unusual, and that hasn't been presented before
7 that goes right to this question. I'll observe
8 you heard almost nothing. I think maybe it was
9 nothing during other closing arguments about the
10 testimony of Michael Egan.

11 Michael Egan is the person you've been
12 specifically asking to hear from in several
13 decisions, and you came in here and he said, with
14 no bones about it, that ratings were not
15 important to a CSO or an SSO.

16 I might add that his view was
17 essentially backed up, lock, stock and barrel, by
18 Toby Berlin. Although she said, "I used
19 ratings." She used local ratings, but more
20 importantly, she also explained that to start
21 ratings, in her own experience, she had to choose
22 to pay a license on television shows that didn't

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1 to our clients by a cable system operator, who
2 then deems it out to its subscribers. Our
3 argument is a good metric for trying to figure
4 out what the owners of this content should
5 receive should look at how many subscribers are
6 paying the CSOs, who are then paying the
7 compulsory license for the stations that run
8 these particular television shows.

9 I think that makes a lot more sense
10 than trying to just contort ourselves into this
11 ridiculous position to try and say, "No, really.
12 It is all backwards." It is really the ratings
13 the television show gets that the CSOs are
14 actually interested in.

15 Judge Strickler asked a question of
16 Mr. Egan about, "Well, what if you did get these
17 ratings?" He said, "Well, I'd look at them. I
18 might be interested." Judge Strickler said,
19 "Well, what if you had two different stations,
20 and it was a decision between the two of them.
21 Wouldn't you be more interested in high ratings
22 on a program in one station versus low ratings in

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1 have much in the way of ratings because they had
2 a real small niche audience; her explanation
3 about the Japanese television show.

4 She admitted, "Yes, it didn't have
5 much value." You know, it didn't amount to much.
6 I said, "It didn't have much in terms of
7 ratings." At the end of her testimony. And she
8 said, "No, it didn't, but they cancelled it and
9 they brought it back despite the fact that its
10 ratings were minuscule or meaningless."

11 Why? Because it rounded out their
12 package and it meant that they could keep
13 subscribers that they would otherwise lose. And
14 so, for Toby to learn in that situation ratings
15 were not important. But what was important was
16 maintaining subscribers. That is why our
17 management doesn't rely on ratings. Our
18 methodology focuses on how many subscribers are
19 receiving the content that is owned by our
20 clients.

21 So, our clients own these TV shows,
22 and they get picked up without any money coming

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1 a program on another?"

2 And Mr. Egan didn't exactly agree. He
3 said, "Well, I'd look at it. It'd be a factor."
4 But still in all his years of experience, he has
5 never seen anyone in that position make a
6 decision on that basis.

7 Again, what we're trying to do here is
8 we're trying to recreate an artificial situation
9 in which we replicate the making of that
10 decision. Well, facts are stubborn things, and
11 the facts before you now, and the evidence before
12 you now is undeniably that cable system operators
13 and satellite system operators do not pay
14 attention to ratings. Whether a show is highly
15 rated or not highly rated does not dictate their
16 decision.

17 Their decision is dictated by its
18 effect on their subscribers. Will they keep
19 them? Will they get more? Will they not lose
20 them? So, it makes sense I think to base
21 distribution on subscribership. That is what
22 this methodology does.

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1 Yes, it is similar. It is not exact,
2 and Dr. Robinson explained it is not exactly the
3 same in its nuts and bolts as prior methodologies
4 offered by IDG. But no doubt it is similar. The
5 other piece of evidence is low and behold, it is
6 also similar from the evidence before us to what
7 they do in Canada and Europe.

8 Now, we can make all the jokes we want
9 about Canadians and Europeans, but the fact of
10 the matter is we're not talking about a bunch of
11 goofballs here. They have chosen to go with
12 these type of metrics. Perhaps for the very good
13 reason that they know that CSOs don't look at
14 ratings. Instead they look at subscribership.

15 Now, on that subject, the fact of the
16 matter is you all have in the record Article 8 of
17 the CCC distribution methodology. You can all
18 read it on your own, and you can go back and you
19 can read Ms. Saunder's testimony about it. You
20 can go and you can read the declaration filed by
21 Lucy Medeiros.

22 Now, I'll let you make your own

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1 strong enough memory of that. They may. They
2 may not. I have to re-read those materials.

3 JUDGE FEDER: If that's something you
4 could point to in your plans.

5 MR. BOYDSTON: Yes. Thank you.

6 JUDGE STRICKLAND: Following up on
7 Judge Feder's question, are you proposing what
8 the CCC does as evidence of foreign law, or just
9 some -- a particular activity of a commercial or
10 non-commercial, non-profit organization in
11 another country?

12 MR. BOYDSTON: I think it's the
13 latter. They're not an element of the Canadian
14 government. So, I think it would have to be the
15 latter. But what I'm really presenting it as is
16 an example of what another entity does.

17 They're trying to distribute these
18 copyright royalties on an equitable basis that
19 they think makes sense, and they seem to think
20 that makes sense. Now, it doesn't mean you have
21 to do it, but after all, especially in the law,
22 we have a long history of looking at empirical

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1 decision, but the -- the words speak for
2 themselves.

3 JUDGE FEDER: Mr. Boydston, is it your
4 contention that CCC is determining relative
5 market value?

6 MR. BOYDSTON: I think that's what
7 they are attempting to do because they're
8 attempting to do exactly what you're attempting
9 to do here, which is distribute --

10 JUDGE FEDER: Clearly, they're
11 distributing money. They're serving a similar
12 function.

13 MR. BOYDSTON: Right.

14 JUDGE FEDER: But we are distributing
15 money on the basis of relative market value. Is
16 there anything in the record that says that is
17 what CCC -- that is the basis for distribution by
18 CCC, or AGICOA for that matter?

19 MR. BOYDSTON: I can't say that I know
20 that, and I can't say that I know it one way or
21 the other. I know they use the term
22 remuneration, but I'm not -- I don't have a

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1 practice and valuating it, and it may have some
2 persuasive impact. Maybe it won't.

3 I don't see a lot different north of
4 the border than down here that would suggest that
5 there's good reason to doubt it.

6 JUDGE STRICKLAND: Maybe they should
7 be doing it the way we do it.

8 MR. BOYDSTON: Maybe so. Maybe so.
9 But I just point out that they're doing it the
10 way they're doing it, and you're right; maybe
11 they should be doing it the way we're doing it.
12 Although, then how do you argue with Mr. Egan,
13 who says, "Okay, well, you can do it by ratings,
14 but that's just not what we actually base our
15 decision to give you this money in the first
16 place in the terms of the copyright license."

17 So, you know, you can choose to not
18 put much stock in Mr. Egan's testimony, or Ms.
19 Berlin's, but it is there. It's there.

20 JUDGE STRICKLAND: I think they're
21 separate questions though.

22 MR. BOYDSTON: Separate question

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1 being, okay, yes; that's what they say. But then
2 --

3 JUDGE STRICKLAND: What is the
4 standard by -- it's clear we apply a relative
5 marketplace standard. It's not clear to me based
6 on anything I've seen so far that either CCC or
7 AGICOA applies a relative marketplace standard.
8 You've raised the term equitable
9 remuneration. It's not clear to me that's the
10 same thing.

11 MR. BOYDSTON: Fair enough. I don't
12 know that it is different. I mean I -- but
13 that's -- that's -- that's for you to --

14 JUDGE STRICKLAND: Persuade us one way
15 or the other, based on the evidence during the
16 proceeding.

17 MR. BOYDSTON: I think that it is
18 clear that all the problems you've been presented
19 with, and perhaps your predecessors too, have all
20 had problems going back to the decision on the
21 '97 proceedings. The CARP lambasted the MPAA's
22 methodology, but it was also critical on IPG's.

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1 In the proceedings that you have all issued
2 decisions, you've been critical of both
3 methodologies as well.

4 The fact of the matter is that zero
5 viewing continues to be a problem, continues to
6 be acknowledged as a problem by everyone except
7 Dr. Gray, and yet I understand in the prior
8 proceedings your conclusion was, "Well, there are
9 problems, but we have to choose a methodology.
10 We are going to have to choose the best one at
11 our disposal."

12 I think it's a little different this
13 time around. That problem remains, no doubt.
14 But on top of that, now you have the additional
15 evidence that the people who pay these licenses
16 don't look at ratings in the first place.

17 So, not only does ratings in terms of
18 reliability due to a lack of data points, which
19 manifests itself in high level of zero viewing,
20 sometimes absurdly high levels of zero viewing.
21 In addition to that, it is measuring a long
22 thing. Just like the CARP concluded in the '97

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1 proceeding and in other proceedings: it measures
2 the wrong thing. And that is confirmed by Mr.
3 Egan and Mr. Berlin.

4 With regard to the CDC, well, with
5 regard to both CDC -- excuse me, SDC. With
6 regard to the SDC, one of their problems is they
7 did base their calculations on the CDC data,
8 which has problems with it. Mr. Galaz pointed
9 them out. Ms. Martin came in here and testified
10 about it.

11 But as you recall, and as you saw from
12 the graph, Ms. Martin identified problems and
13 errors, not just in Mr. Galaz's critique of her,
14 but errors that the CDC had made on its own,
15 including a whopper of 200 million broadcasts.
16 That's a big problem.

17 Excuse me, 200 million subscribers, I
18 believe. I'm getting mixed up now. But it was
19 the 200 million problem. Mr. Galaz also went
20 through and recalculated and found that even
21 after he had made adjustments for a number of Ms.
22 Martin's statements about his inaccuracies, there

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1 were still a lot of inaccuracies left over.
2 Again, many of those were acknowledged by Ms.
3 Martin herself.

4 That's never been straightened out,
5 and that is one of the important predicates for
6 Dr. Erdem's analysis, and therefore, it remains
7 flawed and a problem.

8 Dr. Erdem's attack on the IPG using 99
9 percent of the satellite data and satellite
10 numbers, and also by Dr. Gray? Frankly, I just
11 don't see how it makes any sense at all.

12 The fact of the matter is that if
13 you're using 99 percent, why use a random sample?
14 Why not just use the 99 percent, which is very
15 close of course to 100 percent.

16 Dr. Gray said, "Well, part of the
17 problem is that down at that lower end, you're
18 going to get kicking out more small satellite
19 stations than big ones, and that's going to be a
20 problem.

21 However, on the stratifying basis,
22 that's going to be at the bottom. So, the number

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1 that you're not picking up is going to be
2 minuscule. So, I don't think that makes any
3 sense.

4 With regard to -- excuse me. Again,
5 with regard to the SEC methodology, again,
6 they're using this 1999 February data to
7 basically take that, apply to other data, to
8 predict ten years. Now, it was one thing when
9 they were doing that just for '99 in the prior
10 proceeding that we all had: '98-'99 devotional
11 cable.

12 But now, they want to stretch that all
13 out to 2009. I mean flat footed that looks
14 crazy. I know we have experts that say
15 otherwise, and Dr. Erdem, but we had experts who
16 questioned as well. That includes not just Dr.
17 Robinson, but also in part Dr. Gray.

18 JUDGE BARNETT: Three minutes, Mr.
19 Boydston.

20 MR. BOYDSTON: I think I'm just about
21 done, but I always like to take one last glance
22 at things. Again, I think that really what

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1 you have to do your proposed findings. Mr.
2 MacLean?

3 MR. MACLEAN: With respect to IPG's
4 written objections, if they actually file a
5 motion to strike, the SDC have already filed
6 their opposition. I believe MPAA also already
7 filed its opposition.

8 So, in terms of written objections
9 that have already been made, the only remaining
10 opposition would be IPG's opposition to our
11 written objections and MPAA's written objections.

12 I just want to add to that though IPG
13 has submitted corrections to a large number of
14 its exhibits. I expect that we are at least
15 going to evaluate whether to file an additional
16 written objection on the basis of their seriatim
17 filings of these -- of these -- of these
18 exhibits, and perhaps MPAA might want to evaluate
19 that as well. So, we might also need a date for
20 that as well.

21 We don't need a lot of -- at least
22 from the SDC's perspective, we don't need a lot

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1 you're looking at here is a paradigm choice, and
2 you've been asking to hear from a CSO. You heard
3 from two of them. Well, actually I guess really
4 Ms. Berlin came from the satellite side of
5 things, but they both told you what they told
6 you, which is that they never do anything.

7 They never pay this license based on
8 ratings. I think that is an important fact that
9 can't be marginalized or put aside, or ignored.

10 JUDGE BARNETT: Thank you. Counsel,
11 the stipulation that we approved regarding the
12 time table going forward, provided that you would
13 file proposed findings and conclusions on May
14 18th, and reply to those on June 17th.

15 My feeling at this point is perhaps
16 that May 18th date would be a good date for
17 responses to all of the pending written
18 objections, and June 17th would be the date for
19 proposed findings and conclusions.

20 Well, we will take replies. I'm
21 trying to -- I'm trying to calculate how we're
22 going to get your responses to merchants before

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1 of time for that.

2 JUDGE BARNETT: We anticipated that
3 there would be written objections to the things
4 that we took on the fly. The reason I'm
5 stammering here is because a week from next
6 Monday, we begin five weeks of hearings.

7 So, I don't want you to put you under
8 pressure to file things if we can't get to them,
9 and you can't file your proposed findings and
10 conclusions until we do have time to get to your
11 objections and responses and replies.

12 So, I'm going to put the ball back in
13 your court. As I said, I think it'll be easier
14 for you and for us if you come up with a proposed
15 schedule for when motions need to be filed, when
16 responses for everybody need to be filed, when
17 replies can be filed.

18 Then if you want to do as you did in
19 the past, if you want to propose a stipulation
20 that says so many days after our ruling on the
21 motions will be the time for proposed findings
22 and conclusions, that's fine as well. But as I

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1 said, we are going to be, as they say in Texas,
2 just covered up from now until after Memorial
3 Day.
4 MR. BOYDSTON: Okay, I was just about
5 to ask when the termination was supposed to be as
6 to how we should time this.
7 JUDGE BARNETT: The end of May.
8 MR. BOYDSTON: End of May? All right.
9 JUDGE BARNETT: So, I don't know if
10 you follow this, but it's the webcaster. So,
11 it'll be -- it'll be a fun one this time because
12 Pandora decided to come in and play this time
13 instead of doing private deals. So, we will be
14 busy, I think.
15 MR. MACLEAN: Now, understanding that
16 the reason for spacing these things out, as I
17 understand it, is so that you can rule on
18 objections before we file our written findings of
19 fact and conclusions of law. Do you have an
20 estimate as to how long you would need to do that
21 after we have completed briefing on the
22 objections?

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1 JUDGE BARNETT: No, I don't. That's
2 why I can't give you an estimate. We will
3 certainly address them as quickly as we can.
4 We'll be waiting for proposed findings and
5 conclusions from the webcasters for about a month
6 after the hearing is over. So, that might be a
7 good opportunity.
8 So, just try in there, and we'll try
9 to rule during that time frame when we're waiting
10 for their findings.
11 MR. MACLEAN: I'm just trying to
12 figure out how much we should space our deadline
13 to file findings of fact and conclusions of law
14 after the briefing is completed on the
15 objections.
16 JUDGE BARNETT: I was thinking that
17 you would just make it 30 days, or 45 days after
18 we give you the ruling and the date in precise,
19 other than -- I think you did that before so many
20 days after our ruling, and that seemed to me to
21 be the best way to do it. That way, we're not
22 locked in, and neither are you.

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1 MR. MACLEAN: That makes sense, Your
2 Honor. Thank you.
3 MR. BOYDSTON: It makes sense for us
4 to try and get the briefing. There's -- the
5 briefing could be done but such that you could
6 review it at the beginning of June.
7 JUDGE BARNETT: Right. So, if you can
8 time your new motions, responses and replies so
9 that everything is fully briefed and ready for
10 decision at the beginning of June, all the
11 better. And that seems I think reasonable, given
12 that this is what, the 17th of April? It gives
13 you 45 days to get that all done.
14 Is there anything else for the good of
15 the order? Counsel, as you have done in the
16 past, we do want you to file an electronic set of
17 admitted exhibits. I don't think we had an issue
18 of redaction this time around.
19 Ms. Whittle will be in touch with you,
20 but we do want those in searchable PDF. We want
21 each party's exhibits to be all one document with
22 bookmarks. You don't have to bookmark the

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1 outline within each document, but each exhibit
2 number needs to be bookmarked.
3 MS. PLOVNICK: Would you like us to
4 wait until after your ruling on all the
5 evidentiary issues to submit that so it can
6 incorporate them? You say you don't want us to
7 submit them now and then again later?
8 JUDGE BARNETT: That makes such good
9 sense. It also saves Ms. Whittle from about four
10 days' work of having to go through them, and then
11 toss them out and reorganize them, and renumber
12 them. So, let's do that.
13 MR. MACLEAN: Your Honor, I think
14 there would be issues of redaction with respect
15 to some of the written testimony, which
16 incorporate tables that come from the exhibits.
17 JUDGE BARNETT: With -- that would
18 depend on our rulings. So, I understand --
19 MR. MACLEAN: On the rulings that
20 you've already made.
21 JUDGE BARNETT: Right, okay.
22 MR. MACLEAN: Dr. Robinson and Dr.

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1 Gray.

2 JUDGE BARNETT: Correct. Anything
3 else then? I'm not going to say the record is
4 closed because it isn't. But I assume if we
5 receive all of your materials, then the record
6 would be closed but for proposed findings and
7 conclusions which we will be happy to accept at
8 some point later in the process.

9 Thank you all. This was grueling.
10 Mr. Olaniran, believe me, I know how difficult
11 this was because we were on the other end of it,
12 and we don't have staff. So, I mean that's no
13 offense to Mr. Spasser (phonetic) who has been
14 diligent sitting at the back of the room, but we
15 don't have expansive staff.

16 So, it has been very difficult for you
17 all, as I said. You met our expectations. You
18 rose to the challenge, and I think we're going to
19 get this done. We are attempting to get no more
20 than -- I would like to do annual distributions
21 but it just doesn't make sense.

22 For one thing, the filings don't come

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1 in until July. Then you have to do a notice
2 period, and then blah, blah. But we are trying
3 to keep them to smaller groups and to keep more
4 current, just so that copyright owners get their
5 money.

6 So, anything else then? Thank you
7 all.

8 (Whereupon, the above-entitled matter
9 went off the record at 4:27 p.m.)

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